

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Billed Party Preference for ) CC Docket No. 92-77  
InterLATA 0+ Calls )

**SECOND REPORT AND ORDER AND ORDER ON RECONSIDERATION**

**Adopted: January 29, 1998**

**Released: January 29, 1998**

By the Commission: Commissioner Tristani issuing a statement

**TABLE OF CONTENTS**

	<u>Paragraph No.</u>
I. INTRODUCTION.....	1
II. BACKGROUND.....	4
III. ADDITIONAL ORAL BRANDING .....	10
IV. FCC RATE BENCHMARK OR PRICE REGULATION.....	29
V. BILLED PARTY PREFERENCE.....	35
VI.FORBEARANCE FROM APPLYING SECTION 226 TARIFF FILING REQUIREMENTS	
39	
VII. PETITIONS FOR RECONSIDERATION OF THE 1992 PHASE I ORDER (0+ PUBLIC DOMAIN PROPOSAL).....	44
VIII. INTRASTATE OPERATOR SERVICES .....	52
IX. 0+ CALLS BY PRISON INMATES .....	56
X. PROCEDURAL MATTERS	
A. Final Regulatory Flexibility Analysis.....	62

B.	Final Paperwork Reduction Act of 1995 Regulatory Analysis.....	87
XI.	CONCLUSION.....	92
XII.	ORDERING CLAUSES .....	93

## Appendix A

### Rule Amendments

## Appendix B

### Parties Commenting

## Appendix C

### Comment Summary

## I. INTRODUCTION

1. In this Second Report and Order and Order on Reconsideration, we address the problem of widespread consumer dissatisfaction concerning high charges by many operator services providers (OSPs) for calls from public phones and other aggregator locations such as payphones, hotels, hospitals, and educational institutions.<sup>1</sup> Today, callers at such locations who dial "0" followed by an interexchange number typically do not know what rates the particular OSP will be charging.<sup>2</sup> We amend our rules to require OSPs to disclose orally to away-from-home callers how to obtain the total cost of a call, before the call is connected.<sup>3</sup> This rule makes it easier for such callers using operator services to obtain immediately the cost of the call, prior to the call being completed.<sup>4</sup>

---

<sup>1</sup> OSPs include all carriers that routinely accept interstate collect calls, credit card calls, and/or third-party billing calls from aggregator locations, including hotels providing automated billing. Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2755 (1991). Under the Communications Act of 1934, as amended (the Communications Act), an aggregator is "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 U.S.C. § 226(a)(2).

<sup>2</sup> A 0+ call occurs when the caller enters "0" plus an interexchange number, without first dialing a carrier access code, such as 10288. An access code is a sequence of numbers, e.g., 10288, that connects the caller to the interexchange carrier associated with that number sequence. See infra paras. 44-51.

<sup>3</sup> See Appendix A. The total charges or price that is conveyed must include any aggregator surcharge that such callers will be billed for the operator services call.

<sup>4</sup> Consumers would be advised to press a digit or digits on the key pad or to remain on the line.

Under the current rules, to obtain rate information, a 0+ caller generally has to dial a separate number to reach the OSP and inquire about the OSP's rates. This action should eliminate the surprise that many consumers encounter upon being billed for an operator services call. Further, requiring that OSPs divulge this information without the consumer having to dial a separate telephone number more readily enables consumers to obtain valuable information necessary in making the decision whether to have that OSP carry the call at the identified rates, or to use another carrier.

2. As discussed below, we believe that adoption of this rule will result in better informed consumers, foster a more competitive marketplace, and better serve the public interest than if we were to establish price controls or rate benchmarks.<sup>5</sup> We also decline to implement a billed party preference (BPP) approach to the problem of high rates.<sup>6</sup> We also deny petitions for reconsideration of our Phase I Order in this proceeding, where we declined to implement a fourth alternative to the problem, namely, a 0+ in the public domain approach, in which OSPs would be entitled to access the calling card validation databases of all carriers.<sup>7</sup>

3. In this order we also conclude that we should not, at this time, either waive or forebear from enforcing the requirement that OSPs file informational tariffs pursuant to Section 226 of the Communications Act.<sup>8</sup> We amend our rules, however, to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers.<sup>9</sup>

## II. BACKGROUND

4. This Commission has long been concerned about consumer dissatisfaction over high charges and certain practices of many OSPs for calls from public phones at away-from-home aggregator locations.<sup>10</sup> In 1990, Congress responded to such consumer concerns by providing the

---

<sup>5</sup> See infra paras 29-34.

<sup>6</sup> See infra paras. 35-38. To address the similar problem of high interstate rates for calls initiated by prison inmates, we also amend our rules to require that carriers orally inform the party to be billed for interstate calls initiated by prison inmates of the carrier's identity and to disclose how to obtain the carrier's charges for the call to such party before the call is connected. See infra paras. 56-61.

<sup>7</sup> See infra paras. 44-51.

<sup>8</sup> 47 U.S.C. § 226.

<sup>9</sup> See Appendix A.

<sup>10</sup> See Telecommunications Research and Action Center and Consumer Action Center, 4 FCC Rcd 2157 (Com.Car.Bur. 1989) (TRAC Order) (consumer disclosure and call blocking practices of OSPs found unreasonable in violation of Section 201(b) of the Communications Act); Policies and Rules Concerning Operator Service Providers,

Commission and consumers with additional tools to address abusive practices, through the passage of the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA or Section 226 of the Communications Act.)<sup>11</sup> Under TOCSIA, an aggregator must, among other things, allow consumers the option of using an OSP of their choice by dialing an 800 or other number to reach that OSP, rather than having to use the particular OSP the aggregator has selected as its preferred or presubscribed interexchange carrier (PIC) for long-distance calls.<sup>12</sup> Further, under TOCSIA, OSPs are required to file and maintain tariffs informing consumers of, not only their interstate charges, but also any applicable premises-imposed fee (PIF) or aggregator surcharge collected by the OSP or permitted in an OSP's contracts with aggregators.<sup>13</sup>

---

Notice of Proposed Rulemaking, CC Docket No. 90-313, 5 FCC Rcd 4630 (1990) (rules proposed to remedy problems related to operator services, such as call blocking, that impeded and distorted the operation of a fully competitive OSP industry). "Public phones" refers here to payphones and other aggregator phones, including hotel phones.

<sup>11</sup> Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

<sup>12</sup> 47 U.S.C. § 226(c)(1)(A). This provision requires aggregators to post on or near the telephone instrument, in plain view of consumers:

- (i) the name, address, and toll-free telephone number of the provider of operator services;
- (ii) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone . . .

<sup>13</sup> See 47 U.S.C. § 226(h)(1)(A); note 12, supra. The TOCSIA informational tariff filing requirement became effective on January 15, 1991. Thereafter, rates and surcharges contained in informational tariffs of a dozen OSPs were designated for formal investigation because they did not appear to be just and reasonable. See, e.g., People's Telephone

---

Company, Inc., 6 FCC Rcd 6658 (Com. Car. Bur. 1991); South Texas Phone, Inc., 6 FCC Rcd 6664 (Com. Car. Bur. 1991); Capital Network Systems, Inc., 6 FCC Rcd 6707 (Com. Car. Bur. 1991). In December 1991, the tariffed rates and related aggregator surcharges, of an additional fourteen OSPs also were designated for formal investigation. See, e.g., American Network Exchange, Inc., 7 FCC Rcd 163 (Com. Car. Bur. 1991); American Public Communication, 7 FCC Rcd 169 (Com. Car. Bur. 1991); Ascom Autelca Communications, 7 FCC Rcd 175 (Com. Car. Bur. 1991); Fone America, Inc., 7 FCC Rcd 181 (Com. Car. Bur. 1991). These proceedings were terminated after the OSPs under investigation generally reduced their rates to more reasonable levels.

5. The Commission initiated Phase I of the instant proceeding in May, 1992 to examine alleged competitive inequities arising from AT&T's issuance of its proprietary card and short term proposals by many of AT&T's competitors to restrict the use of proprietary carrier cards with 0+ access.<sup>14</sup> At the same time, we also initiated an investigation of long term issues related to certain interexchange carrier (IXC) calling card practices, including a BPP routing system for all 0+ interLATA calls (Phase II).<sup>15</sup> In November, 1992, the Commission released a Report and Order with respect to Phase I of this proceeding, declining to adopt a "0+ in the public domain" proposal or other alternative interim remedies proffered by AT&T's competitors.<sup>16</sup> In Phase II, we are addressing, on a generic basis, the continuing complaints and concerns over the high level of charges billed consumers by many OSPs.<sup>17</sup>

6. On February 8, 1996, the Telecommunications Act of 1996 (1996 Act) was enacted.<sup>18</sup> The goal of the 1996 Act is to establish "a pro-competitive, de-regulatory national policy framework" in order to make available to all Americans advanced telecommunications and information technologies and services "by opening all telecommunications markets to competition."<sup>19</sup> The 1996 Act requires that the Commission forbear from applying any provision of the Communications Act, or any of the Commission's regulations, to a telecommunications carrier or telecommunications service, or class thereof, if the Commission makes certain specified findings with respect to such provisions or regulations.<sup>20</sup> On June 6, 1996, the Commission released a

<sup>14</sup> Proprietary cards are calling cards that are valid only for calls handled by the carrier that issued the card.

<sup>15</sup> Billed Party Preference for 0+ InterLATA Calls, Notice of Proposed Rulemaking, CC Docket No 92-77, 7 FCC Rcd 3027 (1992).

<sup>16</sup> Billed Party Preference for 0+ InterLATA Calls, CC Docket No. 92-77, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 7714, 7726 (1992), petitions for reconsideration pending (Phase I Order). See infra paras. 43-45.

<sup>17</sup> In May 1994, the Commission tentatively concluded that the implementation of a BPP system for 0+ calls for interLATA payphone traffic and for other types of operator-assisted interLATA traffic would serve the public interest. Billed Party Preference for 0+ InterLATA Calls, Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 9 FCC Rcd 3320 (1994) (Further Notice). Under BPP, operator-assisted long-distance traffic would be carried automatically by the OSP preselected by the party being billed for the call. Given the estimated cost of BPP, calculated in the neighborhood of \$1 billion as of 1993, and the fact that much of the data of record on which its tentative conclusion was based was dated, the Commission sought proposals for less costly alternatives to BPP. The Commission stated that it would mandate BPP only if its benefits outweighed its costs, and those benefits could not be achieved through alternative, less costly, means. Id., 9 FCC Rcd at 3325.

<sup>18</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq. Hereinafter, all citations to the 1996 Act will be to the 1996 Act as it is codified in the United States Code.

<sup>19</sup> Joint Explanatory Statement of the Committee of Conference, S. Conf. Rep. No. 230, 104th Cong., 2nd Sess. 113 (1996).

<sup>20</sup> 47 U.S.C. § 160(a).

Second Further Notice of Proposed Rulemaking in the instant proceeding<sup>21</sup> seeking comment on whether, under the 1996 Act, we should forbear from applying the informational tariff filing requirements of Section 226.<sup>22</sup> The Commission also sought comment on whether to require all OSPs to disclose their rates on all 0+ calls.<sup>23</sup> Alternatively, the Commission sought comment on a tentative conclusion that we should: (1) establish benchmarks for OSPs' consumer rates and associated charges that reflect what consumers expect to pay and (2) require OSPs that charge rates and/or allow related PIFs whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest interstate, interexchange carriers to disclose the applicable charges for the call to consumers orally before connecting a call.<sup>24</sup> Further, with respect to collect calls initiated by prison inmates, we sought comment on whether the public interest would be better served by some alternative to BPP.<sup>25</sup>

7. In the OSP Reform Notice, we noted that OSPs generally compete with each other to receive 0+ traffic by offering commissions to payphone or premises owners on all 0+ calls from a public phone. In exchange for this consideration, the premises owners agree to designate the OSP as

---

<sup>21</sup> Billed Party Preference for InterLATA 0+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 7274 (1996) (hereinafter OSP Reform Notice).

<sup>22</sup> Id. at 7295-96. Under Section 226, OSPs are required to file informational tariffs specifying all charges, including any PIFs such as aggregator surcharges, that consumers may be billed for making or accepting interstate telephone calls placed from payphone or other aggregator locations. 47 U.S.C. § 226(h)(1)(A) provides that:

[e]ach provider of operator services shall file . . . and shall maintain, update regularly, and keep open for public inspection, an informational tariff specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers . . . with respect to calls for which operator services are provided . . . .

On October 31, 1996, the Commission released a Second Report and Order in CC Docket No. 96-61, in which it determined under Section 10 to forbear from requiring or allowing nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services. Policy and Rules Concerning the Interstate, Interexchange Marketplace, 11 FCC Rcd 20,730 (1996), stayed, MCI v. FCC, No. 96-1459 (D. C. Cir. February 13, 1997), modified on reconsid., 12 FCC Rcd 15,014 (1997) (hereinafter Tariff Forbearance for Nondominant Carriers). We left to the instant proceeding whether we should similarly forbear from applying the tariff filing requirements of Section 226 of the Communications Act. 11 FCC Rcd at 20,789-90.

<sup>23</sup> OSP Reform Notice, 11 FCC Rcd at 7283.

<sup>24</sup> Id. at 7294.

<sup>25</sup> Id. at 7301. Thirty-nine parties timely filed comments. Also, two dozen reply comments, including some filed jointly by more than one party, were timely filed. The parties filing comments and reply comments are listed in Appendix B. On October 10, 1996, the Common Carrier Bureau sought further comment on certain specific questions. Public Notice, 11 FCC Rcd 12,830 (Com. Car. Bur. 1996); 61 F.R. 54979 (October 23, 1996) (Public Notice). Twenty-three parties filed comments or reply comments in response thereto. See Appendix B.

the "presubscribed" IXC or PIC serving their payphones.<sup>26</sup> Many OSPs using this strategy agree to pay very high commissions to both premises owners and sales agents who sign up those premises owners and claim, as a consequence, they must assess very high usage charges to consumers placing calls from payphones. While this process has generated added revenues for the premises owners and sales agents, it forces callers to pay exceptionally high rates. As a result, some callers began to use access codes, such as 800 numbers, to reach their preferred, lower-priced OSPs and to avoid the payphone's presubscribed OSP.<sup>27</sup> Because payphone owners and other aggregators did not earn any commissions on these so-called "dial around" calls, many aggregators blocked the use of access codes from their phones.<sup>28</sup>

1. As noted above, Congress enacted TOCSIA in 1990, which directed the Commission to promulgate regulations to "protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls . . . [and to] ensure that consumers have the opportunity to make informed choices in making such calls."<sup>29</sup> Among the regulations that we have issued pursuant to that mandate is a requirement that payphone providers and other aggregators permit callers to use 10XXX, 1-800, and 950 access codes to reach their carrier of choice.<sup>30</sup>

1. Branding requirements that the Commission adopted in response to TOCSIA currently require an OSP to "[i]dentify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call."<sup>31</sup> This identification is intended to notify consumers of the identity of the presubscribed OSP before they purchase

---

<sup>26</sup> OSP Reform Notice, 11 FCC Rcd at 7278.

<sup>27</sup> A consumer "dials around" a presubscribed carrier by dialing an access code prefix (e.g., 10333 or 1-800-877-8000 to reach Sprint, 1-800-888-8000 to reach MCI, and 1-800-CALL ATT for AT&T) in order to reach the consumer's preferred long distance carrier.

<sup>28</sup> Because aggregators also experienced fraud due to access code-like dialing, many blocked the use of access codes from their phones.

<sup>29</sup> See 47 U.S.C. § 226(d)(1).

<sup>30</sup> See 47 C.F.R. § 64.704. Pursuant to Section 226(c)(1)(A)(ii) of the Communications Act, the Commission has required unblocking of all aggregator phones. See 47 C.F.R. § 64.704(c)(5). The Commission also adopted rules and policies governing the payphone industry that, among other things, established a plan to ensure fair compensation for each completed intrastate and interstate call using a payphone. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 20,541; Order on Reconsideration, 11 FCC Rcd 21,233; applications for review granted in part and denied in part, Illinois Public Telecommunications Assn. v. FCC and United States, 117 F.3d 555 (D.C. Cir. 1997). (Payphone Compensation Order).

<sup>31</sup> 47 C.F.R. § 64.703(a)(1); see Policy and Rules Concerning Operator Service Providers, 6 FCC Rcd at 2756-57. In this connection, under our rules, OSPs also must identify themselves to both parties of a collect call. 47 C.F.R. § 64.708(d) (definition of consumer includes both parties to a collect call).



service from that OSP.<sup>32</sup> Consumer education initiatives by the industry, government, and the media appear to have helped produce a favorable downward trend over recent years in the number of complaints received by the Commission about high OSP rates. Nevertheless, more than five years after enactment of TOCSIA, the high rates of many OSPs and surcharges imposed by aggregators continue to be a concern.<sup>33</sup> In 1995, the second largest category of complaints processed by the Commission's Common Carrier Bureau consisted of complaints directed against OSPs, and the vast majority of these concerned rates and charges that consumers thought were excessive.<sup>34</sup> In 1996, the Commission processed 4,132 written complaints about the level of interstate rates and services of OSPs.<sup>35</sup> Accordingly, we examine in the next sections what additional steps we can and should take to foster greater competition by OSPs.

### III. ADDITIONAL ORAL BRANDING

#### A. Background

1. In our OSP Reform Notice, we sought comment on the benefits and costs associated with imposing a price-disclosure requirement on all 0+ calls. We noted that while consumers generally are informed about the prices that they will be charged for the individual 1+ calls that they make from their homes, they may not be aware that 0+ calls from outside the home may be more expensive than such 1+ calls. We asked commenters to evaluate whether the benefits of requiring disclosure of the price for each 0+ call before a call is completed, including calls priced at levels that consumers expect, would exceed the costs of such disclosure. We indicated that such a requirement would further a pro-competitive, pro-consumer environment and obviate Commission regulation of particular nondominant carriers' prices.

#### B. Comments

---

<sup>32</sup> See Policies and Rules Concerning Operator Service Providers, 5 FCC Rcd 4630, 4631-32 (1990) (citing TRAC Order, *supra*, 4 FCC Rcd at 2159).

<sup>33</sup> See, e.g., Letter from Honorable Strom Thurmond to Reed E. Hundt (February 12, 1996), File No. IC-96-00963 (urging prompt FCC action to protect the American public from excessive rates charged by some OSPs); letter from Honorable John Edward Porter to Reed E. Hundt (February 9, 1996), File No. IC-96-00866 (inquiring about constituent concerns over high rates charged by Oncor Communications, Inc.). Some OSPs charge up to 10 times the AT&T rate. Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002. See also Don Oldenburg, Long Di\$tance; Pay-Phone Charges Can Burn the Unwary, Wash. Post, June 8, 1995, at D05, available in 1995 WL 2097640.

<sup>34</sup> The Bureau processed 4,487 written OSP complaints in 1995. This represented 17.6% of the total complaints processed. Common Carrier Scorecard, Federal Communications Commission, Fall 1996 edition, at 14-15.

<sup>35</sup> Common Carrier Scorecard, Federal Communications Commission, Dec. 1997 edition, at 22. This represented 11.87% of total complaints processed in 1996.

2. Many commenters agree with our observation that the problem of consumers often being billed charges much higher than expected stems from a lack of adequate information for callers to make an informed choice.<sup>36</sup> Several commenters attribute this problem to a misconception among many consumers that if they use a LEC calling card to charge the call, the call will be handled by that LEC or at least at rates comparable to those charged by their residential or business presubscribed carrier or the LEC's rates.<sup>37</sup> In fact, these calls are typically billed at the presubscribed OSP's rates and the aggregator's surcharge. Consumers, relying on their mistaken impression, however, do not discover their error until they receive bills for their calls some time later.

1. The commenters disagree on whether a new price disclosure rule would be in the public interest.<sup>38</sup> Several commenters contend that a universal rate disclosure requirement will only operate to increase the price of 0+ calls and burden an entire industry with additional, unnecessary costs. Some argue that to the extent that current rules may be insufficient to protect consumers, the challenge is primarily in the area of consumer education. Others contend that a universal rate requirement will distress consumers that expect a payphone call to be connected quickly without unnecessary delay. One commenter states that it has no current technology in place to quote rates and that there is no mechanized system for real-time quotation for 0+ calls.

2. Other commenters assert that the Commission's proposal to impose a requirement on all OSPs to disclose orally their rates to consumers when a call is placed could immediately address many of the concerns prompting the consideration of BPP and at a much lower cost to consumers and carriers. CompTel proposes that, before a customer may incur any charges for any interstate 0+calls from an aggregator location, the presubscribed carrier serving that aggregator phone be required to provide an audible disclosure immediately after its carrier brand. Such disclosure would inform the customer how to obtain a rate quote without having to re-dial a second number. A number of state commissions and the Attorneys General support adoption of rules requiring universal rate disclosure to the paying party, believing that option would be administratively simpler, more informative, and fairer than a benchmark system, and lead to more competitive pricing.

### C. Discussion

3. Insofar as ultimate consumers are concerned, we disagree with suggestions that the Commission should adopt regulations requiring OSPs to provide consumers with less, rather than more, information about the prices of their services and any related per call surcharge that an OSP permits in order to be selected by an aggregator to be its PIC. As noted previously, OSPs generally compete to receive 0+ traffic by offering commissions to payphone or premises owners, or allowing

---

<sup>36</sup> See OSP Reform Notice, 11 FCC Rcd at 7282.

<sup>37</sup> Id.

<sup>38</sup> See Appendix C at paras. 1-23.

surcharges to be placed, on all 0+ calls from a public phone in exchange for being chosen by the premises owners as the PIC serving their phones at that aggregator location.<sup>39</sup> The North Dakota Commission, Sprint, and other commenters correctly note that competition between OSPs in this segment of the market for aggregator customers historically has driven prices to consumers up, rather than down, in order to finance such commissions and gain 0+ business.<sup>40</sup>

4. We cannot find that existing measures that are designed to protect consumers against excessive prices for 0+ payphone calls are adequate. Although current statutory dial-around, branding and posting requirements,<sup>41</sup> the Commission's implementing rules,<sup>42</sup> industry print, radio and television advertisements,<sup>43</sup> other industry, governmental and media consumer education initiatives,<sup>44</sup> marketplace competition, and the Commission's complaint and enforcement procedures provide important assistance to consumers, the large number of complaints concerning OSP rates we continue to receive indicates that these measures are not sufficient. Accordingly, we disagree with those commenters who contend that no additional rules are necessary at this time.<sup>45</sup> As the New York State Consumer Protection Board (NYSCPB) observed, current branding and posting requirements are insufficient notification to prevent consumer surprise and dissatisfaction because

---

<sup>39</sup> Our Payphone Compensation Order, requiring providers of payphones at aggregator locations to be compensated for dial-around calls, should serve to alleviate, if not eliminate, any need for OSPs to pay high commissions or to permit high aggregator surcharges. See supra note 30.

<sup>40</sup> See Letter from Susan E. Wefald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, to Secretary, Federal Communications Commission (July 3, 1996); Sprint Comments at 9; Florida Commission Comments at 8 ("competition exists among OSPs to serve payphone owners, not to serve end users"); Daniel Pearl, Costly Talk: Why Pay-Phone Calls Can Get So Expensive And Spark Complaints, Some Long-Distance Carriers Reward Shops to Sign Up and Then Soak Callers, Wall St. J., May 30, 1995, at A1, available in 1995 WL-WSJ 8715335 ("[c]ompetition over pay phones has made prices soar").

<sup>41</sup> 47 U.S.C. § 226.

<sup>42</sup> 47 C.F.R. §§ 64.703-708.

<sup>43</sup> See, e.g., Daniel Pearl, Costly Talk: Why Pay-Phone Calls Can Get So Expensive and Spark Complaints, supra, Wall St. J., May 30, 1995, at A6. (AT&T and MCI commercials urge callers to dial their special 800 numbers when making collect calls).

<sup>44</sup> See, e.g., "Public Phone Users Beware," Consumer News, Federal Communications Commission (June 1996); Common Carrier Scorecard, Federal Communications Commission, Fall 1996 edition at 14-15; Jane Adler, Dialing Up for Dollars: Biz Owners Say Beware of Pay Phone Scams, Crain's Chi. Bus., July 18, 1994, at 23, available in 1994 WL 3009472.

<sup>45</sup> Any complainant alleging that a nondominant carrier's rates are unreasonably high in violation of Section 201(b) has a heavy burden to overcome the presumption of lawfulness of rates of nondominant carriers and that a carrier without market power cannot long survive if it sets its rates at a supracompetitive level. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations, First Report and Order, CC Docket No. 79-252, 85 FCC 2d 1 (1981) (applying current regulatory procedures to nondominant carriers imposes unnecessary and counterproductive regulatory constraints upon a marketplace that can satisfy consumer demand without government intervention).

they provide no indication of what consumers will be charged for 0+ calls from an aggregator site.<sup>46</sup>

We agree with its view that the high rate of complaints and inquiries, at both the federal and state levels, regarding excessive OSP charges demonstrates that stronger consumer safeguards are needed.<sup>47</sup> Some commenters rely on the Commission's findings and conclusions in its Final TOCSIA Report to support their claims that the market is sufficiently competitive and that all that is needed are targeted ad hoc enforcement proceedings or further consumer educational initiatives, not new rules.<sup>48</sup> The Commission there found that informed consumer choice "is the best means of ensuring that the rates consumers pay for interstate operator service calls are just and reasonable."<sup>49</sup> We concluded that, especially because of the availability and growing use of the dial-around option by consumers, market forces were securing rates for consumers that, "overall, are just and reasonable."<sup>50</sup> Accordingly, we found that "conditions in the operator services marketplace are such that we need not initiate a further proceeding to prescribe regulations concerning rates for operator services at this time."<sup>51</sup> Despite these conclusions regarding the operator services marketplace as a whole, the Commission noted that some OSPs "still charge rates that are substantially above the industry mean and these rates may warrant further action by the Commission."<sup>52</sup>

5. Based on our experience following release of the Final TOCSIA Report, we conclude that, although many OSPs compete for the business of aggregators, such competition in this segment of the interstate, domestic interexchange market has not ensured that OSP charges and aggregator surcharges are not excessive insofar as ultimate consumers are concerned. Indeed, ACTEL, a payphone service provider (PSP) and OSP operating throughout New Jersey, readily conceded, that in the absence of adequate compensation for all dial-around and toll-free subscriber 800 and 888 calls, the rates for operator-assisted calls placed from its public pay telephones have been "too high."<sup>53</sup> Also, additional consumer educational initiatives, while necessary and appropriate

---

<sup>46</sup> NYSCPB Comments at 3,7. Unless otherwise indicated, all citations to comments and reply comments of record in this proceeding are to comments or reply comments filed, or which were due to be filed, on July 17, 1996, and August 16, 1996, respectively.

<sup>47</sup> Id. at 4.

<sup>48</sup> See, e.g., US WEST Reply Comments, filed December 3, 1996, at 2.

<sup>49</sup> Final Report of the Federal Communications Commission, pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, November 13, 1992, Final TOCSIA Report at 2.

<sup>50</sup> Id. at 32. As required by TOCSIA, the Commission there concluded a "rate compliance" proceeding, which it had initiated as Phase II of CC Docket No. 90-313. Id. at 1.

<sup>51</sup> Id. at 2 (emphasis added).

<sup>52</sup> Id. at 3 (footnote omitted).

<sup>53</sup> ACTEL response, received July 8, 1996, at 3. See Payphone Compensation Order, supra, 11 FCC Rcd at 20549 n.35 (Term "Subscriber 800 calls" includes other sequences of numbers that FCC may deem in future the equivalent, such as 888).

to further consumers' awareness of their options and enable them to make an informed or better informed choice, have proven insufficient, and are unlikely to be sufficient, in and of themselves, to protect thousands of consumers who have not availed themselves of dial-around options. Nor has our overall experience with targeted ad hoc rate proceedings proven to be an efficient and effective means of ensuring just and reasonable charges in the OSP marketplace.

6. Under the rules adopted herein, before a 0+ interstate, domestic, interexchange call from an aggregator location may be connected by an OSP, the OSP must orally advise the caller how to proceed to receive a rate quote, such as by pressing the # key or some other key or keys, but no more than two, or by simply staying on the line.<sup>54</sup> This message must precede any further oral information advising the caller what to do to complete the call, such as to enter the caller's calling card number. Thus, under our rule, OSPs may require affirmative action by the consumer in order to receive a rate quote. The rule applies to all calls from payphone or other aggregator locations, including those from store-and-forward payphones or "smart" telephones. Potential OSP customers, after hearing an OSP's message, may waive their right to obtain specific rate quotes for the call they wish to make by choosing not to press the key specified in the OSP's message to receive such information or by hanging up.<sup>55</sup> Therefore, it is quite unlikely that all calls would entail costs associated with the intervention of a live operator. Further, the additional time for consumers to make 0+ calls and for OSPs' call set-up process for such calls should not be significant, given the brief language that OSPs are required to add following their audible identification brand. Just as now, consumers may bypass their right to receive rate quotes by proceeding to enter their credit card number. And OSPs may proceed with call set-up at the same time that the oral message required by our rules is being delivered. Of course, as currently mandated by TOCSIA and our rules, OSPs must continue to afford consumers a reasonable opportunity to terminate the telephone call at no charge before the call is connected.<sup>56</sup> OSPs may proceed with call set-up whether they require callers either to act affirmatively to receive rate quotes or merely to remain on the line to receive such quotes. We conclude that the information disclosure requirements adopted herein are sufficient to enable consumers to make informed business decisions in the marketplace. Such disclosure also is in accord with the dual purpose and policy objectives of TOCSIA, *i.e.*, (1) "[protecting] consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls;" and (2) providing sufficient information to "ensure that consumers have the

<sup>54</sup> We are not aware of any technical reason why more than a one or two-digit keypad entry would be necessary. *See* ex parte letter from Steven A. Augustino, counsel for CompTel, to William F. Caton, Acting Secretary, Federal Communications Commission (April 4, 1997) at page 1; ex parte letter from Mason Harris, President, Robin Technologies, Inc., to Paul F. Gallant, Legal Advisor to Commissioner Tristani (January 22, 1998) at page 2.

<sup>55</sup> Callers, of course, would also avoid the delay due to disclosure rules regarding prices when calling via an access code rather than making a 0+ call. The new disclosure requirement is not applicable when a caller dials-around the presubscribed OSP by dialing another carrier's 800, 10XXX, or similar identification or access code. The requirement also is inapplicable to calls to local and long distance operators, *i.e.*, 0- and 00 calls, where callers who wish to make interstate calls already have the opportunity to obtain rate quotes.

<sup>56</sup> 47 C.F.R. § 64.703(a)(2) (OSP's "shall . . . permit the consumer to terminate the telephone call at no charge before the call is connected.").

opportunity to make informed choices in making such calls."<sup>57</sup> This disclosure requirement will better ensure that consumers do not unintentionally use carriers that charge unexpectedly high rates for interstate calls, or use such carriers only because they are unaware that they have other options. We conclude that the rules adopted herein will serve to place downward pressure on prices charged in excess of competitive rates, and could save consumers part, if not all, of a previously estimated quarter of a billion dollars per year.<sup>58</sup>

7. The proper allocation of resources in our free enterprise system requires that consumer decisions be intelligent and well informed.<sup>59</sup> In a competitive market, people will tend to search for the cheapest product or service when other factors are comparable. Accurate price information at the point of purchase is therefore important for commercial choices in a market economy. Especially, as here, when an OSP may not have established long-term relationships with potential customers, the absence of price information at the point of purchase inhibits competition from driving prices down and requires consumers, provided that they are so inclined, to spend more time to find the best or a lower price. OSP and aggregator practices that are designed to keep, or have the effect of keeping, callers ignorant of all applicable charges for a 0+ call from that particular aggregator location facilitates undue manipulation of consumers' choices in this segment of the interstate, domestic interexchange market.

8. We agree with the assessments of the Attorneys General and other commenters that rules requiring universal rate disclosure to the paying party would be administratively simpler, more informative, and fairer than our benchmark proposal and that "a complete and accurate universal rate disclosure requirement will increase consumer awareness and lead to more competitive pricing."<sup>60</sup> In further implementation of our responsibilities under TOCSIA "to ensure that consumers have the opportunity to make informed choices in making [interstate operator services telephone] calls,"<sup>61</sup> we shall require all OSPs to make additional oral disclosure at the point of purchase of 0+ calls. This will better enable consumers to be aware of, and have the option of, exercising their legal rights. We believe consumers need to have sufficient information, prior to being charged for an interstate call, to be fully aware of their right to know the cost of a 0+ call, including any applicable PIF or aggregator surcharge, and of their right to obtain rate quotes of the applicable OSP charges for the initial rate period and each subsequent rate period. Consistent with the intent of Congress when it enacted TOCSIA, we conclude that the price quoted for the call must include either the cost of the specific applicable surcharge, or the maximum surcharge that could be billed at that aggregator

---

<sup>57</sup> 47 U.S.C. § 226(d)(1); see § 226(d)(1)(A).

<sup>58</sup> See OSP Reform Notice, 11 FCC Rcd at 7293-94 (commenters have estimated that prices in excess of competitive rates cost consumers approximately a quarter of a billion dollars per year).

<sup>59</sup> Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 765 (1976).

<sup>60</sup> Attorneys General Comments at 8.

<sup>61</sup> 47 U.S.C. § 226(d)(1)(B).

location.<sup>62</sup> We believe that these additional up-front oral disclosures will prove to be a more effective and efficient means of providing consumers the information they need to make fully informed decisions regarding the choice of an OSP than (a) various other messages that have been proposed by some commentators<sup>63</sup> or (b) requiring carriers that are not bound by our accounting and cost allocation rules to file cost data in support of their charges.

9. Several commenters, including Sprint, oppose adoption of a universal prior price disclosure requirement to address the problem of high OSP charges and related PIFs. These commenters maintain that such a requirement will lead to increased costs and delayed call completion.<sup>64</sup> Sprint continues to maintain that "the only way to mitigate, if not eliminate, the market power of premises owners is to require the implementation of [BPP]."<sup>65</sup> No one has denied, however, that to implement BPP would entail a considerable period of time and even greater costs. The cost of implementing BPP has been estimated at around a billion dollars, whereas the estimated costs of implementing the oral disclosure requirement are much less and will accomplish many of the same objectives.<sup>66</sup> Insofar as delayed call completion is concerned, the California Commission has concluded, on the basis of its experience from its 900 proceedings, that "price disclosure prior to call completion will not create an unacceptable delay to consumers."<sup>67</sup> Pacific Telesis disagrees with the California Commission, contending that, because 900 rates are postalized and the disclosure is on the terminating line of the call, "the disclosures involved are so dissimilar as to be irrelevant."<sup>68</sup> Pacific Telesis does not explain, however, why the disclosure apparatus for 0+ calls from a particular aggregator site could not be sited on a particular originating, rather than terminating, number or line. It also fails to take into account that, as market segments become more competitive, current industry trends are toward postalized or flat rates, irrespective of such factors as mileage, time of day, and other specifics of a call.<sup>69</sup>

---

<sup>62</sup> See H.R. Rep. No. 101-213, 101st Cong., 1st Sess. 14 (1992) (OSPs can meet filing requirement to specify aggregator surcharges by filing the range of surcharges collected on behalf of call aggregators). Unlike aggregator surcharges, which Congress allowed OSPs to express as a range in their information tariffs, OSPs' own charges must be specifically disclosed in their informational tariffs. See Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd at 2757.

<sup>63</sup> See OSP Reform Notice, 11 FCC Rcd at 7291-93.

<sup>64</sup> Sprint Reply Comments, filed December 3, 1996, at 1; see, e.g., Reply Comments, filed December 3, 1996, of APCC, AT&T, CCOS, Intellicall, and Pacific Telesis.

<sup>65</sup> Sprint Reply Comments, filed December 3, 1996, at 5 n.2.

<sup>66</sup> As CompTel notes, the approach that we adopt herein is simple, direct and less costly than BPP. See CompTel Comments filed November 13, 1996 at 2-5.

<sup>67</sup> California Commission Comments, filed November 13, 1996, at 5 (emphasis in original).

<sup>68</sup> Pacific Telesis Reply Comments, filed December 3, 1996, at 3.

<sup>69</sup> Mark Rockwell, GTE Introduces Flat-rate Pricing, Communications Week, Feb. 3, 1997, at T33, available in 1997 WL 7691446 (GTE rolled out a flat-rate long-distance calling plan for consumers, to complement its flat-rate plan

10. Further, requiring OSPs to disclose price information about their services does not infringe on their First Amendment commercial speech rights. The United States Supreme Court has stated that when the government "regulates commercial messages to protect consumers from misleading, deceptive, or aggressive sales practices, or requires the disclosure of beneficial consumer information, the purpose of its regulation is consistent with the reasons for according constitutional protection to commercial speech and therefore justifies less than strict review."<sup>70</sup> In commercial speech cases, the Supreme Court has used a four-prong analysis:

At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.<sup>71</sup>

11. Requiring OSPs to disclose the price of a 0+ call does not compel them to make misleading or confusing commercial speech, contrary to a commenter's suggestion,<sup>72</sup> and does not contravene their First Amendment rights. The Commission previously has imposed a similar requirement to disclose rates on providers of 900 service.<sup>73</sup> No common carriers, including OSPs, may lawfully provide interstate telecommunications service, except at rates that are just and reasonable.<sup>74</sup> Assuming, *arguendo*, that an OSP's charges and any applicable PIF associated with an interstate 0+ call are neither unreasonable nor misleading, then a governmental requirement that the OSP must disclose such charges at the point of purchase, *i.e.*, mandating commercial speech that is

---

for businesses); How to Keep 'Em on the Loop, Telemedia News & Views, Apr. 1, 1996 (A rouser of "low fare" long-distance carriers, led by Sprint Long Distance and several second tier carriers offering "postalized" flat \$0.10-a minute rates); Telco Communications Adding Internet to Commercial Long Distance, M2 Presswire, Dec. 10, 1996, available in 1996 WL 14655722 (Prime Business Select II offers one simple flat rate for both intrastate and interstate calls); Sprint, MCI Announce New Long-Distance Plan, Orlando Sentinel, Jan. 7, 1995, at C10, available in 1995 WL 6401982 (Sprint offering flat rates for residential long-distance calls); Kevin Petrie, Small Competitors Roll Out Flat-rate Phone Plans, Denv. Bus. J., Nov. 24, 1995, at 4, available in 1995 WL 11627775.

<sup>70</sup> 44 Liquormart, Inc. v. Rhode Island, 116 S. Ct. 1495, 1506 (1996).

<sup>71</sup> Id. citing Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n of N.Y., 447 U.S. 557, 566 (1980).

<sup>72</sup> See AMNEX Comments at 8-9 n.22.

<sup>73</sup> Policies and Rules Concerning Interstate 900 Telecommunications Services, 6 FCC Rcd 6166 (1991).

<sup>74</sup> 47 U.S.C. § 201(b) provides that "[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign communication by wire or radio common carrier] service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful . . ."



not misleading concerning lawful activity, is not inconsistent with the first part of the four-prong analysis.

12. With respect to the second prong of the analysis, the rules adopted herein will directly advance a substantial governmental interest, *i.e.*, protecting consumers from unfair and deceptive practices or possible rate gouging. We have received thousands of complaints annually over the past several years, directly from consumers, or from Congressional offices, alleging that callers from payphone and other aggregator locations have been billed excessive rates and charges. These represent the third largest category of complaints that our Common Carrier Bureau has processed over recent years. With respect to the third prong of the analysis, our new rules are tailored to advance directly "the asserted governmental interest" in this proceeding and are not more extensive than what we believe is necessary to serve that interest. For example, we do not require OSPs automatically to disclose the rate for every call. Instead, we require such disclosure only upon affirmative request of the caller. Indeed, we believe other regulatory alternatives we have considered would not advance as well our goals of fostering a more fully competitive OSP marketplace and ensuring that away-from-home callers have sufficient information at the point of purchase to make an informed decision whether or not to place a call through a particular OSP. Such alternative regulatory options we considered include: mandating BPP; prohibiting PIFs; conducting a rulemaking to prescribe appropriate accounting, cost allocation, and cost support rules with respect to charges of nondominant carriers; prescribing caps on charges of OSPs and aggregators; establishing benchmark rates; and engaging in other price regulation of nondominant carriers' retail charges. As we discussed above, each of these options would have been more burdensome, and possibly less effective, than what is necessary to serve the public interest.

13. MCI erroneously maintains that OSPs should not be required to include PIFs in any rate disclosure required by Commission rule because PIFs are not part of the carrier's tariffed rate.<sup>75</sup> To the contrary, all OSPs, including MCI or its OSP affiliate, are required currently under TOCSIA to include PIFs in their Section 226 informational tariffs.<sup>76</sup> Only PIFs that an OSP has specified or permitted in its PIC agreement with a particular aggregator must be reflected in such tariffs. Our information disclosure rules similarly require a nondominant OSP to disclose only such aggregator surcharges and PIFs, if any, that it has permitted in the applicable PIC agreement with an aggregator.

14. The rules adopted herein provide OSPs and potential OSP competitors a level playing field in that they apply equally to all OSPs and, unlike benchmark proposals based on the rates of AT&T, MCI, and Sprint, do not establish two classes of OSP competitors (*i.e.*, "the Big Three" and all smaller carriers). Accordingly, we need not address contentions that proposed benchmark policies and rules based on such classes are arbitrary, discriminatory and, if adopted,

---

<sup>75</sup> MCI Comments at 4.

<sup>76</sup> 47 U.S.C. § 226(h)(1)(A). (Every OSP informational tariff must include any surcharges and fees collected from consumers).

would deny smaller carriers "equal protection" of the law in contravention of their Fifth Amendment rights.<sup>77</sup>

15. We are cognizant of the remarks of those who have commented that exact rate disclosure is technically infeasible to implement for store-and-forward payphones, and would necessitate the forced retirement of existing equipment.<sup>78</sup> Other commenters, such as GTE, assert that, while it may be possible to enhance mechanized equipment to quote exact rates prior to the call, this likely would require significant capital outlays and take several years lead time to accomplish. In our 1991 order implementing TOCSIA, we stated that, "with regard to automated technology only, the provision of rate and other information via the use of a separate toll-free number is a reasonable method of compliance with [Section 64.703(a) of our rules]."<sup>79</sup> We cautioned, however, that "as technology is developed that eliminated the necessity for a separate number, the use of that number should also be eliminated."<sup>80</sup> OSPs have had more than six years to adapt to, and come into full compliance with, our rules that implemented TOCSIA in 1991. Under such rules, OSPs currently must provide oral rate quotes to prospective customers on request. The rules, as amended herein, require that such rate quotes be furnished at no charge to the caller and without the caller having to hang up and dial a separate number to obtain them. We also stated that "any rates quoted by an OSP must be exact rather than approximate."<sup>81</sup> In computing the price of any given 0+ call that OSPs disclose mechanically under Section 64.703(a), as amended herein, OSPs may, at their option, use the maximum cost, including any aggregator surcharge, for the initial and additional minutes, in lieu of using the actual rates, including any surcharges, for the call. We decline, however, to adopt proposals that would afford OSPs the additional flexibility to quote average charges that the caller could be billed. We agree with the views expressed by some commenters that consumers could easily be misled by an average rate disclosure as to the level of the applicable charges for the particular call they wish to make.

16. We deny requests to exempt currently embedded store-and-forward equipment, even when such "smart" telephones are not capable of being retrofitted to comply with the new disclosure rules. The record does not provide a sufficient basis to justify such a broad exemption from our rules. We shall, however, allow 15 months after the effective date of our rules before such embedded equipment must be modified or replaced. That should provide more than sufficient time for parties to come into compliance with the rules. In particular, we are prepared to consider waiver requests on a specific factual showing of good cause. Such showing should specify, for example, the number

---

<sup>77</sup> See, e.g., AMNEX Comments at 3; CompTel comments at 14.

<sup>78</sup> See, e.g., Joint Reply Comments of Intellicall and NOSI at 18. A store-and-forward or "smart" payphone is essentially an automated operator system contained in the payphone itself.

<sup>79</sup> Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd at 2757.

<sup>80</sup> Id.

<sup>81</sup> Id.

of embedded phones for which waiver is sought, whether significant numbers of complaints emanate for calls from such phones, and whether the pay phone provider is willing to offer other meaningful efforts to increase consumer awareness of their options. Intellicall, Inc., a provider of "smart" pay telephones to the customer-owned pay telephone service industry,<sup>82</sup> has requested that its ULTRATEL store-and-forward payphones be required only to advise callers how to obtain rate quotes and to be exempt from the requirement to provide such quotes without callers having to dial a second number.<sup>83</sup> Intellicall, Inc. states that its ULTRATEL payphones can be retrofitted within four to six months to provide verbal instructions advising callers on how to obtain a rate quote on each call by hanging up and dialing two digits, i.e., \*0 (star-zero).<sup>84</sup> We deny such request. It is within an OSP's discretion what rate information it will disclose and how it will do so, not the decision of an equipment provider. Although Intellicall, Inc.'s subsidiary company, Intellicall Operator Services, Inc., provides network-based operator and prepaid services throughout the United States from aggregator locations,<sup>85</sup> the request before us is on behalf of the equipment manufacturer, not its OSP subsidiary. Moreover, while it appears that Intellicall, Inc. has sold over 200,000 pay telephones for use in forty-six states, of which over 60,000 use store-and-forward technology,<sup>86</sup> its request fails to specify how many of its payphones cannot be retrofitted to comply with the rules adopted herein and otherwise lacks the specificity necessary to justify a blanket exemption from the rate disclosure requirement. We have determined that disclosure of rate information at the point of purchase will better enable consumers to make informed decisions and also further competition in the OSP marketplace. Intellicall, Inc. has not made a sufficient showing of good cause to warrant exempting calls from any of its payphones at aggregator locations from the requirement that OSPs, including its subsidiary OSP, disclose the cost thereof if requested by prospective customers.

17. In summary, OSPs' informational tariffs, our open entry policies, and current competition in the OSP marketplace have not been sufficient to ensure that the charges for all OSP calls are just and reasonable. The price of an interstate 0+ call from an aggregator location is generally higher, and, in some cases, substantially higher, than consumers pay for 0+ calls from their regular home or business location. Consumers making such away-from-home calls often do not have any long-term business relationship or familiarity with the presubscribed OSP that the aggregator has selected to provide operator services at its site. The policies and oral information disclosure rules we adopt herein require OSPs to provide accurate information about the price of

---

<sup>82</sup> Intellicall Comments at 2.

<sup>83</sup> Ex parte Letter from Judith St. Ledger-Roty, counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (Mar. 21, 1997) at 4.

<sup>84</sup> Id. OSPs, including those that provide service from store-and-forward payphones, have been on notice for more than a year that they could be made subject to proposed price disclosure requirements of record in this proceeding and that we expected them "to begin to take the actions necessary to be able to implement them in a timely manner." OSP Reform Notice, 11 FCC Rcd at 7294.

<sup>85</sup> Id.

<sup>86</sup> Id.

their services to consumers, particularly prospective new customers whom they have never served, if callers exercise their right to receive a rate quote. The rules require OSPs to disclose to consumers the true cost of placing a call through them, including any applicable aggregator surcharge, or the maximum possible such charge, that they permit. Such surcharges are a principal, if not the principal, reason for consumer complaints about OSP rates and charges. The rules provide transient callers with the information necessary to maximize their awareness of their options and to make informed decisions with respect to payphone calls. The rules, thus, are not only pro-consumer, but also pro-competitive in furthering marketplace decisions based on options available to an informed consumer.

#### IV. FCC RATE BENCHMARK OR PRICE REGULATION

##### A. Background

18. In the OSP Reform Notice, we invited comment on our tentative conclusion that we should require OSPs to disclose rates when they exceed consumers' expectations. To achieve this, we tentatively concluded that OSPs that charge rates, or allow related PIFs, whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest IXCs be required to disclose the cost of the call orally to consumers, before connecting the call.<sup>87</sup> We also sought suggestions for alternative disclosure requirements that would more effectively and efficiently provide consumers with the information that they need to make fully informed decisions regarding the choice of an OSP.<sup>88</sup>

---

<sup>87</sup> OSP Reform Notice, 11 FCC Rcd at 7294.

<sup>88</sup> Id.

## B. Discussion

19. For reasons set forth below, we decline to adopt benchmark rules. Instead, as previously discussed, we are requiring OSPs to disclose to consumers orally how to obtain rate quotes or the price of a call to a specific terminating location, to enable them to make a more informed decision at the point of purchase.<sup>89</sup> This course of action will best serve the dual objectives of TOCSIA, further our goal of fostering a more fully competitive marketplace for operator services from payphones and other aggregator locations, help ensure a level playing field for all OSP competitors, and better serve the public interest than would the use of benchmarks as tentatively proposed in the OSP Reform Notice.

20. Commenters were divided in terms of support for the use of benchmarks and whether such benchmarks should be based upon consumer expectations and tied to the rates of the three largest carriers (e.g., based on some percentage of the average of those rates or some set flat increase over such rates).<sup>90</sup> After considering the alternatives to benchmarks and examining the record before us, we agree with those commenters who believe that benchmarks would not be the best alternative for addressing the problem. We believe that the imposition of price controls or benchmarks upon the entire industry, in order to curtail rate gouging by some carriers and aggregators, would be overly regulatory and could even stifle rate competition (e.g., if it results in carriers migrating their rates to the benchmark, or only slightly below it).<sup>91</sup>

21. In addition, commenters submit that many consumers would not expect OSP charges and aggregator surcharges at even the levels that would be allowed under CompTel's benchmark proposal of 115% of the weighted average of the largest three carriers' rates. Such charges are perceived as excessive not only by some consumers, but public officials, regulators, and, according to the state Attorneys General, even many OSPs.<sup>92</sup> We also agree with commenters that establishing benchmarks based on the average of rates of the three largest IXC's or their OSP affiliates, could arguably constitute a denial of the equal protection of the law to all other OSPs.

---

<sup>89</sup> See supra paras. 14-28.

<sup>90</sup> See Appendix C at paras. 24-42.

<sup>91</sup> See, e.g., Letter from Susan E. Wedfald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, North Dakota Public Service Commission, to Secretary, Federal Communications Commission (July 3, 1996) (The North Dakota Commission's experience is that benchmarks will not have the intended result of motivating operator services providers to keep rates low).

<sup>92</sup> See, e.g., Attorneys General Comments at 4 ("Many OSPs agree with our assessment that CompTel's proposed benchmarks are too high"); NARUC Comments at 1 (CompTel's proposed rate benchmarks of \$3.75 and \$4.75 are "excessively high"); NYSCPB Comments at 6 (benchmarks proposed by CompTel, Bell Atlantic, NYNEX and others are "far too high"); Pennsylvania Commission Reply Comments, filed May 5, 1995, at 4-6 (CompTel's proposed benchmarks are "excessive," agreeing with comments to that effect filed on or about April 12, 1995 by the Colorado Commission Staff, Ameritech, Sprint and the National Association of Attorneys General, Telecommunications Subcommittee of the Consumer Protection Committee).

22. Moreover, even if benchmarks were not based on a separate class of carriers, setting benchmarks at the level initially proposed by CompTel could be anti-competitive and anti-consumer. If such presumed reasonable or "safe harbor" benchmarks were adopted, we believe those OSPs whose rates currently are below those levels would have an incentive to increase their rates to those levels. Also, it could be argued that express or implied Commission forbearance from regulating tariffed rates that did not exceed the levels proposed by CompTel, constitutes federal agency approval of collusive price-fixing by OSP competitors.

23. Accordingly, we are persuaded by the comments of those opposed to our benchmark proposal that such a price regulatory approach is not the best answer to the problem of consumers being billed unexpectedly high charges for 0+ services. The anomalies in this segment of the interstate telecommunications market are directly attributable to consumers lacking sufficient information of the cost of service at the point of purchase. We believe that the oral disclosure requirements that we adopt today will help to ensure that consumers have the information they need to make informed decisions concerning whether they wish to make a 0+ call through a particular carrier or to place the call through one of hundreds of other OSPs competing in this market. We therefore find that the oral disclosure requirement adopted above will not only more readily achieve our goal of protecting consumers, but by providing consumers with access to information necessary to make informed choices, also accomplishes this goal in a manner more consistent with the pro-competitive goals of the 1996 Act.

## V. BILLED PARTY PREFERENCE

### A. Background

24. Under BPP, operator-assisted long-distance traffic would be carried automatically by the OSP preselected by the party being billed for the call.<sup>93</sup> This would be done by permitting a person signing up for a calling card to select the OSP that would carry that customer's interstate payphone traffic whenever that customer used the calling card. The network would be able to identify that OSP by checking a database listing the chosen OSP associated with each calling card. Based on the comments filed by parties in 1993, the Commission estimated that the cost of implementing BPP would be on the order of \$420 million in amortized annual costs.<sup>94</sup> This is based on an estimate of LEC costs of \$1.1 billion in non-recurring costs (including approximately \$500 million for end office software) plus \$60 million in recurring costs (most of which would be due to increased expenses for training and employing operators), and recurring OSP costs of about \$35 million per year.<sup>95</sup> Given the estimated cost of BPP, the Commission sought proposals for less

<sup>93</sup> Further Notice, 9 FCC Rcd at 3320.

<sup>94</sup> Id. at 3325.

<sup>95</sup> Id. at 3325-26.

costly alternatives.<sup>96</sup> We stated that we would mandate BPP only if its benefits outweighed its costs, and those benefits could not be achieved through alternative, less costly, means.<sup>97</sup> Two years later, we noted that, while the record indicated that the cost of BPP "would likely be quite substantial," local number portability was mandated by the 1996 Act and we intended to give further consideration to BPP as number portability developed.<sup>98</sup> We remarked that "[i]f local exchange carriers are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide."<sup>99</sup>

B. Discussion

25. We decline to adopt BPP. As detailed in Appendix C, only a few parties continue to support BPP.<sup>100</sup> Moreover, there is no convincing evidence that the benefits of BPP outweigh its costs, and that those benefits can not be achieved through alternative, less costly, means.<sup>101</sup> Thus, we decline to require this expensive change to the network as a means of reducing customer dissatisfaction with OSP rates. Rather, the increased consumer disclosures required by this Order will meet our objectives, including protecting consumers, and fostering rate competition, in a less burdensome manner.

26. In the OSP Reform Notice, we noted that the 1996 Act mandates local number portability and that we intended to give further consideration to BPP as number portability developed. We requested comment on our suggestion that "[i]f local exchange carriers are required, thus to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide."<sup>102</sup> Based on the updated record, we cannot conclude that the implementation of local number portability will have this effect. In the absence of firm data that shows a favorable cost/benefit ratio, we are not willing to mandate BPP, and the proponents have not provided us with such data. No one has challenged the LECs' assertions that implementation of number portability will not render BPP more economically feasible to implement.<sup>103</sup> The fact that local number portability [LNP] databases will

---

<sup>96</sup> Id. at 3325.

<sup>97</sup> Id.

<sup>98</sup> OSP Reform Notice, 11 FCC Rcd at 7277.

<sup>99</sup> Id. at 7277-78.

<sup>100</sup> See Appendix C at paras. 43-44.

<sup>101</sup> Further Notice, 9 FCC Rcd at 3325.

<sup>102</sup> OSP Reform Notice, 11 FCC Rcd at 7277-78.

<sup>103</sup> See, e.g., BA/BS/NYNEX Comments at 9; SWBT Comments at 2; U S WEST Comments at 12-14.

not exist in all areas also militates against reliance on LNP as a basis for mandatory BPP.<sup>104</sup> Moreover, as some commenters argue, the increased advertisement and use of dial-around will yield the same result as BPP at no cost to upgrade the network. We are cognizant of assertions that to continue to leave open the possibility of BPP as a possible long-term solution to the problem of high OSP rates is harming OSPs in the capital markets.<sup>105</sup> We also agree that it would be unwise to implement BPP in the inmate calling environment, given the need for special security measures there.<sup>106</sup>

27. Equally as important, and as discussed in detail in the previous sections, we find that the oral price disclosure requirement will achieve the same benefits, at significantly less cost, and in a manner consistent with the pro-competitive goals of the 1996 Act. Accordingly, we decline to adopt BPP to redress the problem of high rates of OSPs and providers of operator services to prison inmate phones.

## VI. FORBEARANCE FROM APPLYING SECTION 226 TARIFF FILING REQUIREMENTS

### A. Background

28. Under the 1996 Act, we must forbear from applying any regulation or provision of the Communications Act if we determine that such forbearance is consistent with the statutory criteria listed in Section 10(a) therein.<sup>107</sup> In our OSP Reform Notice, we sought comment on

---

<sup>104</sup> See Appendix C at para. 45.

<sup>105</sup> See, e.g., CompTel Comments at 22.

<sup>106</sup> Inmate Calling Services Providers Coalition Comments at 7. See also Gateway Technologies, Inc. Comments at 4 (Commission cannot legitimately provide for carrier choice in the inmate services environment).

<sup>107</sup> The 1996 Act enacted new Section 10(a) of the Communications Act which provides as follows:

REGULATORY FLEXIBILITY. -- Notwithstanding section 332(c)(1)(A) of this Act, the Commission shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of its or their geographic markets, if the Commission determines that --

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.



whether we should forbear from applying Section 226 tariff filing requirements to nondominant interexchange OSPs if they either provide an audible disclosure of the applicable rate and charges prior to connecting any interstate 0+ call from a payphone location, or certify that they will not charge more than FCC-established benchmarks for such calls. We noted that TOCSIA authorizes us to waive the requirement for informational tariffs if we determine that such tariffs no longer are necessary to: (1) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and (2) ensure that consumers have the opportunity to make informed choices in making such calls.<sup>108</sup> We tentatively concluded that a requirement that OSPs disclose the specific price of a call to the consumer before connecting a call would better protect consumers from unexpectedly high charges than the filing of "informational" tariffs, which are effective without prior notice and provide very limited protection at the time of purchase.<sup>109</sup> Based on this analysis, we sought comment on whether the most effective long-term solution for protecting consumers is to provide them with a mechanism for exercising choice, such as by entering into a long-term relationship with carriers, by having an audible brand stating the price of any call before the call is connected, or additional branding stating the price of any call that would exceed benchmarks that we might establish.<sup>110</sup>

29. We also sought comment on whether price information at the point of purchase, rather than the availability of pricing and other material information from the public tariffs of rivals, is more likely to allow consumers to exercise rational purchasing decisions, encourage OSPs to initiate price reductions and other competitive programs, and impose market-based discipline on abusive OSPs.<sup>111</sup>

---

1996 Act at § 401 (adding Section 10(a), 47 U.S.C. § 160(a)).

<sup>108</sup> OSP Reform Notice, 11 FCC Rcd at 7296, citing 47 U.S.C. § 226(h)(1)(B).

<sup>109</sup> Unlike the effective date of rates in tariffs filed pursuant to Section 203 of the Act, which the Commission may suspend, rates and surcharges in informational tariffs filed pursuant to Section 226 are effective without prior notice to the public and the Commission. See Section 226(h)(1)(A) ("changes in [informational tariff] rates, terms, or conditions shall be filed no later than the first day on which the changed rates, terms, or conditions are in effect.")

<sup>110</sup> OSP Reform Notice, 11 FCC Rcd at 7297.

<sup>111</sup> Id.

## B. Comments

30. The commenters disagree on whether we should forbear from applying the Section 226 tariff filing requirement.<sup>112</sup> Some support a complete detariffing policy and assert that informational tariffs are not necessary to protect consumers against unfair or deceptive practices. Others urge us to make the finding specified in that section for waiving such requirement. AT&T maintains that the Commission should apply the same tariff forbearance rules to its operator services as it applies to its other interstate services. Another commenter supporting forbearance with regard to the requirement to file informational tariffs asserts that OSPs have misinformed consumers about the purpose of informational tariffs.

31. Other commenters are opposed to complete detariffing, believing that informational tariffs ensure that OSP charges and practices are just and reasonable and are an important consumer safeguard. Some commenters contend that it is premature to remove the tariff filing requirement and that informational tariffs are needed as a tripwire to enable the Commission to determine whether further investigation is necessary.

## C. Discussion

32. We are not prepared to conclude at this time that Section 226 informational tariffs no longer are necessary to protect consumers and that we should either waive or forbear from requiring such tariffs. We continue to receive thousands of consumer complaints each year about OSP rates and related aggregator surcharges or PIFs. We amend our rules to increase the usefulness of informational tariffs by requiring that such tariffs include specific rates expressed in dollars and cents as well as applicable per-call aggregator surcharges or other per-call fees, if any, that are collected from consumers.<sup>113</sup> The continued filing of these tariffs will allow the Commission to monitor OSPs' rates and any related surcharges after the rules adopted herein become effective. We will revisit whether informational tariffs by nondominant carriers still are needed if our rules achieve the anticipated results. We conclude that requiring OSPs to disclose how to obtain the price of a call to prospective customers at the point of purchase, in addition to the availability of pricing and other material information from the public tariffs of rivals, will allow consumers to exercise rational purchasing decisions, encourage OSPs to initiate price reductions and other competitive programs, and impose market-based discipline on OSPs. Under TOCSIA, the rates and related surcharges or fees in OSPs' informational tariffs may be changed without prior notice to consumers or to this Commission. As noted above, we have authority to waive the statutory requirement for such tariffs if we determine that our rules adequately protect consumers from unfair and deceptive practices and

---

<sup>112</sup> See Appendix C at paras. 56-64.

<sup>113</sup> See Appendix A.

ensure their opportunity to make informed choices in making 0+ calls from payphones or other aggregator sites such that tariffs are unnecessary.<sup>114</sup>

## VII. PETITIONS FOR RECONSIDERATION OF THE 1992 PHASE I ORDER (0+ PUBLIC DOMAIN PROPOSAL)

### A. Background

33. In 1992, the Commission considered the need to address competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access.<sup>115</sup> Although the Commission planned to examine a wide range of issues related to the OSP market segment, we decided to take immediate action in response to parties' concerns and proposals.<sup>116</sup> MCI first proposed restriction of proprietary IXC cards with 0+ access in April 1991.<sup>117</sup> MCI then proposed that the Commission should mandate 0+ dialing as being in the "public domain," so that all carriers issuing calling cards with instructions to use 0+ as the access method would be required to permit access by other OSPs to billing and validation information for these cards, so that other OSPs would be able to handle and bill for 0+ calls by such card holders.<sup>118</sup> Under that proposal, carriers that wished to issue proprietary cards, in other words, not make billing and validation information available to other OSPs, would be required to establish an 800 or 950 access method instead of using 0+.<sup>119</sup> In addition, MCI advocated that the Commission require that any OSP completing a calling card call using 0+ access, where feasible, not charge more than the applicable rates of the carrier issuing the card, so that consumers would not be assessed unexpectedly high rates.<sup>120</sup> This concept was ultimately termed the "0+ Public Domain" proposal.<sup>121</sup>

34. The Commission received expressions of concern that the 0+ public domain proposal could undermine AT&T's card issuer identification (CIID) cards,<sup>122</sup> which in 1992 were used by

---

<sup>114</sup> See supra para. 34.

<sup>115</sup> Phase I Order, 7 FCC Rcd 7714. Proprietary calling cards are calling cards that are valid only for calls handled by the carrier that issued the card.

<sup>116</sup> Id.

<sup>117</sup> See id. at 7714 n.1.

<sup>118</sup> See id.

<sup>119</sup> See id.

<sup>120</sup> See id.

<sup>121</sup> See id.

<sup>122</sup> The CIID card is proprietary because AT&T does not permit other OSPs to access and use the data necessary

more than 20 million people.<sup>123</sup> Conversely, some of AT&T's competitors claimed that their inability to accept calls made with these cards seriously handicapped them in the operator services marketplace.<sup>124</sup> In taking certain steps to protect consumers and mitigate competitive problems that resulted from the use of proprietary IXC calling cards with 0+ access, the Commission released its Phase I Order.<sup>125</sup>

35. In its Phase I Order, the Commission considered the competitive problems resulting from the use of AT&T proprietary calling cards with the 0+ form of access in the presubscription environment, wherein an OSP other than AT&T could be the presubscribed OSP for aggregator phones.<sup>126</sup> The Commission considered arguments which urged that adoption of a system of 0+ access for calling cards with open validation databases was essential to preserving a competitive market segment for operator services.<sup>127</sup> The Commission also considered arguments that the 0+ public domain proposal would create confusion and inconvenience for IXC customers.<sup>128</sup> Consistent with its paramount concern for consumer welfare, and in order to mitigate the competitive problems that result from the use of proprietary IXC calling cards with 0+ access, the Commission required AT&T to change its practices by revising its access instructions to card holders.<sup>129</sup> Specifically, the Commission directed AT&T to (1) educate its cardholders to check payphone notices and to use 0+ access only at public phones identified as presubscribed to AT&T; (2) provide clear and accurate access code dialing instructions on every proprietary card issued; and (3) make its 800 access code number easier to use.<sup>130</sup> The Commission found that consumer education was the interim remedy best suited to the immediate consumer and competitive concerns caused by AT&T's dialing instructions, and declined to adopt the 0+ public domain proposal or other

---

to validate calls billed to this card. The lack of OSP access to AT&T's CIID card database was alleged to contribute to consumer confusion and frustration when 0+ calls could not be completed due to the OSP's inability to validate the card information.

<sup>123</sup> See, e.g., Letter from Honorable Bud Cramer, Member of Congress, to Alfred C. Sikes, Chairman, Federal Communications Commission (June 12, 1992) (requesting that 0+ public domain be carefully evaluated for its effect on consumers and rejected if not beneficial to consuming public).

<sup>124</sup> See Letter from Alfred C. Sikes, Chairman, Federal Communications Commission, to Honorable Bud Cramer, Member of Congress (June 29, 1992).

<sup>125</sup> Phase I Order, 7 FCC Rcd at 7726, 7714.

<sup>126</sup> Id. at 7719.

<sup>127</sup> Id. at 7721.

<sup>128</sup> Id. at 7722.

<sup>129</sup> Id. at 7714, .

<sup>130</sup> Id. at 7724-25.

alternative interim remedies proffered by AT&T's competitors.<sup>131</sup> Eight parties (petitioners) filed petitions for reconsideration of that decision.<sup>132</sup>

36. Petitioners advance various arguments in support of their requests: the Commission failed to take appropriate action to eliminate anti-competitive problems posed by the CIID program;<sup>133</sup> the Commission's promise to consider BPP as a solution was inappropriate in light of "immediate competitive problem(s);"<sup>134</sup> the Commission failed to recognize that the CIID card is not a common proprietary IXC card;<sup>135</sup> the Commission acquiesced to AT&T's "threat" that it would require access codes for its cardholders, thereby perpetuating a "monopolistic" environment;<sup>136</sup> the CIID card is not truly proprietary; and the Commission's actions are inconsistent with its requirement of nondiscriminatory access to LEC validation data.<sup>137</sup> Thus, petitioners argue, the Commission should adopt the 0+ public domain proposal and require AT&T to open its billing and validation database. In this section, we address these issues and conclude that the petitions for reconsideration should be denied.

#### B. Discussion

37. As an initial matter, we conclude that petitioners restate arguments that they previously raised and which the Commission fully considered in reaching its Phase I Order.<sup>138</sup> Because petitioners have offered no new facts or legal arguments in support of their petitions, as discussed below, we find no basis to reconsider the Commission's decision not to adopt the 0+ Public Domain proposal in the Phase I Order. We also note that AT&T has been dropping its calling card billing agreements with LECs, reportedly as part of its strategy to handle all calls on its own network rather than sharing billing information with LECs.<sup>139</sup> AT&T's cancellation of its billing agreements with LECs has rendered, or in the foreseeable future should render, petitioners' concerns in this regard largely moot. Thus, we deny the petitions for reconsideration of the Phase I Order.

---

<sup>131</sup> Id.

<sup>132</sup> See Appendix B at 5; Appendix C at 32.

<sup>133</sup> See, e.g., CompTel petition at 8.

<sup>134</sup> Id. at 9, 11-12.

<sup>135</sup> Id. at 15; LDDS Petition at 5; PhoneTel Reply to Opp. to Petition at 4.

<sup>136</sup> LDDS Petition at 5-6; ITI Petition at 4; Polar Petition at 3; see also MCI Petition at 4-5.

<sup>137</sup> LDDS Petition at 10-13.

<sup>138</sup> See AT&T Opp. Petition at 3; AT&T Reply in Opp. to Petition at 2.

<sup>139</sup> See Communications Daily, May 28, 1997, at 9 ("AT&T Ending Practice of Allowing its Customers to Use AT&T Calling Card when Dialing Long Distance, Forcing Its Customers to Use 800-CALL-ATT Bypass Service").

38. LDDS argues that because AT&T permits shared access to its CIID card database by "virtually any company that jointly provided long distance service with AT&T prior to divestiture," the Commission was incorrect in considering the database to be proprietary.<sup>140</sup> LDDS maintains that AT&T should be required to permit access to its database by all other carriers, not just LECs. This argument, however, ignores the fact that AT&T nonetheless exercises control over access to its database. Nothing in the record suggests that any entity other than AT&T has control over its CIID card validation database. The fact that AT&T chooses to share access to its database with certain other carriers (e.g., LECs) does not mean that it has relinquished dominion over the database or that the card is not proprietary to AT&T's system. The Commission did consider the option of requiring AT&T to open its card validation database to all carriers.<sup>141</sup> The Commission noted, however, that AT&T clearly stated that it would not open its database for its competitors' use and would implement a system of strict access code calling.<sup>142</sup> The Commission found that to force this result would not serve the public interest.<sup>143</sup>

39. In its Phase I Order, the Commission attempted to address the issues of consumer costs and a competitive OSP calling environment through the remedy of a mandated consumer education program.<sup>144</sup> CompTel asserts that "the record shows that the instance of misdirected attempts by MCI or Sprint proprietary card holders is negligible because these carriers educate their customers to use the card in conjunction with an access code."<sup>145</sup> The Commission adopted the consumer education requirement, finding that any costs to AT&T of carrying out this remedy were far outweighed by the gains in consumer convenience and competition.<sup>146</sup> The Commission further noted that "[i]f AT&T educates all of its customers to check public phone signage before dialing, and to dial 0+ only where AT&T is identified as the presubscribed carrier, its competitors should receive significantly fewer misdirected calls."<sup>147</sup> Some petitioners argue that the Commission should order an alternative remedy such as the recall and reissuance of 25 million AT&T CIID cards.<sup>148</sup> We believe, however, that such a remedy would be even less effective because it would create even greater customer confusion and market disturbances than existed prior to the

---

<sup>140</sup> LDDS Petition at 7.

<sup>141</sup> Phase I Order, 7 FCC Red at 7721, 7723.

<sup>142</sup> Id. at 7723-24.

<sup>143</sup> Id. at 7723.

<sup>144</sup> Id. at 7724.

<sup>145</sup> CompTel Petition at 15, n.36.

<sup>146</sup> Phase I Order, 7 FCC Red at 7725.

<sup>147</sup> Id.

<sup>148</sup> PhoneTel Petition at 8-9; see LDDS Petition at 15-16.

Commission's consumer education order. The Commission's mandated customer education program attempts to reduce the instances of unbillable CIID calls while not unreasonably disturbing the dialing habits of AT&T cardholders. This remedy is less burdensome and more consistent with the public interest than the proposed recall and reissuance of all AT&T CIID cards. The Commission's choice of a narrowly tailored remedy has proven effective, in light of a four-year period in which consumers have used the CIID card in accord with AT&T's new instructions<sup>149</sup> and hundreds of OSPs continue to operate in this market segment.<sup>150</sup>

40. In October 1995, the Commission took note of the competitive concerns, including AT&T's use of its proprietary CIID card, that petitioners had raised more than three years earlier when they sought reconsideration of the Commission's Phase I Order. In AT&T Reclassification Order, the Commission found that AT&T's competitive position in the provision of calling card and other operator services had not created market power in the overall interstate, domestic, interexchange telecommunications market.<sup>151</sup> The Commission noted that because of requirements adopted in the Phase I Order in the instant proceeding, AT&T no longer marketed its proprietary card using a 0+ message to gain a competitive advantage with public phone presubscriptions.<sup>152</sup> The Commission further noted that, by 1992, MCI and Sprint, together, had issued over 32 million proprietary cards.<sup>153</sup> The Commission stated that it, "has closely monitored operator services in recent years, and [that] the primary problems that we have observed in this market segment have not involved AT&T"<sup>154</sup> and that ". . . to the extent that there are problems in this market segment, they do not appear attributable to AT&T."<sup>155</sup>

---

<sup>149</sup> In 1993, the Common Carrier Bureau reviewed and approved AT&T's plan for consumer education. See Letter from Cheryl A. Tritt, Chief, Common Carrier Bureau, to Robert H. Castellano, Director, Federal Regulation, AT&T, dated February 4, 1993.

<sup>150</sup> As of August 19, 1997, approximately 630 OSPs had informational tariffs on file with the Commission.

<sup>151</sup> Motion of AT&T to be Reclassified as a Non-Dominant Carrier, Order, 11 FCC Rcd 3271, 3323 (1995), petitions for reconsideration denied, 62 FR 56,111 (October 8, 1997) (AT&T Reclassification Order).

<sup>152</sup> Id. at 3323-24.

<sup>153</sup> Id. at 3324.

<sup>154</sup> Id. (footnote omitted).

<sup>155</sup> Id. at 3325.

## VIII. INTRASTATE OPERATOR SERVICES

### A. Background

41. We note that with respect to operator service providers that compete with LECs to provide operator services from aggregator locations, state regulation has varied from prohibiting competitive operator services altogether (no longer permissible under Section 253 of the Communications Act)<sup>156</sup> to allowing such services on an unregulated basis.<sup>157</sup> More than thirty states regulate long-distance charges for intrastate calls made through OSPs.<sup>158</sup> Illinois, for example, permits a surcharge of no more than \$2.50 and requires that per-minute rates be no higher than those of the dominant provider.<sup>159</sup>

### B. Comments

42. Although we did not invite comment on this issue, NARUC and the NYCPB request that we make clear that states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services.<sup>160</sup> The Ohio Commission, which supports adoption of oral disclosure rules as suggested by the Colorado Commission staff, urges that, regardless of our decision regarding additional oral branding requirements, "any posting

---

<sup>156</sup> Section 253(a) provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." (emphasis supplied), 47 U.S.C. § 253(a). See Classic Telephone, Inc., 11 FCC Red 13082 (1996) (cities' decisions denying franchise applications preempted), appealed sub nom. City of Bogue, Kansas v. FCC, No. 96-1432 (D.C. Cir.) emergency petition denied and appeal ordered held in abeyance pending further order of the court, 1997 WL 68331 (D.C. Cir.) Jan. 14, 1997; New England Public Communications Council, 11 FCC Red 19713 (1996) (overturning Conn. Dept. of Public Utility Control's decision that had prohibited independent pay phone providers and other non-LECs from offering pay phone service in Connecticut), reconsideration denied, 12 FCC Red 5215 (1997).

<sup>157</sup> See NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 362; C.U.R.E. Reply Comments at Attachment 1(Summary of State Survey Regarding Rate Restrictions on InterLata, Intrastate Inmate Telephone Rates).

<sup>158</sup> NARUC Compilation of Utility Regulatory Policy 1995-1996, Table 164, at 362I. See also Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

<sup>159</sup> Penny Loeb, Watch that Pay Phone or Risk Getting Charged Far Above the Usual Rate for Long-distance Calls, U.S. News & World Rep., June 26, 1995, at 60, available in 1995 WL 3114002.

<sup>160</sup> Letter from James Bradford Ramsay, Deputy Assistant General Counsel, NARUC, to William F. Caton, Acting Secretary, Federal Communications Commission (July 16, 1996) at 1; NYCPB Comments at 7.



requirements, either mandated by the FCC or by the individual states, be maintained."<sup>161</sup> Other state regulatory agencies similarly oppose adoption of any rules that would preclude states from adopting more safeguards or more stringent rules regarding OSPs and providers of operator services to correctional institutions.<sup>162</sup> Such state agencies assert that OSPs and providers of operator services to correctional institutions should be prohibited from charging rates in excess of absolute rate caps on all operator service calls and, if they are not, that any oral information required to be given by OSPs be provided audibly and distinctly, in both English, and in the predominant second language, if any, of the residents of the wire center served by the aggregator's telephone.<sup>163</sup> In addition, the oral information should also provide the consumer with directions how to reach and use a carrier whose rates are less than FCC established benchmarks.<sup>164</sup> The agencies suggest adoption of a rule that would not require customers to pay any charges that exceeded any FCC established price cap or benchmark if the required notice had not been given.<sup>165</sup> The Florida Commission is concerned that the use of forbearance authority to eliminate interstate tariff requirements might have repercussions at the state level.<sup>166</sup>

C. Discussion

43. While we continue to receive many complaints about high rates for 0+ calls involving both interstate and intrastate services from payphones, the policies and rules adopted herein are applicable only to interstate services.<sup>167</sup> As requested by NARUC and the NYCPB, we clarify that the states are not precluded from adopting greater safeguards or more stringent rules regarding OSP services and aggregator practices with regard to intrastate operator services than those that we have adopted herein for interstate services. Any such state statute, regulation, or legal requirement, however, may not violate Section 253 (a) of the Communications Act,<sup>168</sup> must not be

<sup>161</sup> Ohio Commission Comments at 4.

<sup>162</sup> See, e.g., jointly filed Reply Comments of the State of Maine Public Utilities Commission, State of Montana Public Service Commission, New Mexico State Corporation Commission, and State of Vermont Department of Public Service.

<sup>163</sup> Id. at 2.

<sup>164</sup> Id.

<sup>165</sup> Id.

<sup>166</sup> Florida Commission Comments at 7.

<sup>167</sup> Section 226 is concerned with interstate, domestic, interexchange operator services. See 47 U.S.C. § 226(a)(7) ("The term 'operator services' means any interstate telecommunications service initiated from an aggregator location . . .") (emphasis added). Providers of operator services from the United States to foreign points are subject to the tariff filing requirements of Section 203, and our rules and policies applicable to international telecommunications services.

<sup>168</sup> See supra n. 156.

preempted under Section 276(c) of the Communications Act,<sup>169</sup> and must not contravene any other provision of the Communications Act, or any Commission regulation or order. We stress that we are adopting minimum requirements that are not intended to preempt state requirements or safeguards. We note, for example, that the New York State Department of Public Service (NYDPS), which urged this Commission to set benchmarks for OSPs' interstate rates, has rules that:

allow the tariffs of operator services providers [which are required to be filed by the New York State Public Service Commission] to take effect unless the maximum rates charged by such providers exceed the highest rates authorized by the commission for a local exchange telephone corporation or a dominant interexchange telephone corporation in the state for similar kinds of operator assisted telephone calls.<sup>170</sup>

44. The policies and rules we adopt herein do not preclude, for example, state actions that prohibit aggregator surcharges or other PIFs for intrastate calls, or that cap OSP rates and related PIFs, such as the rate cap in Florida tied to AT&T's rates that the Florida Commission adopted<sup>171</sup> and the Pennsylvania Commission's proposed \$1.00 cap on location surcharges on intrastate OSP calls in Pennsylvania.<sup>172</sup> As requested by Citizens United for Rehabilitation of Errants (C.U.R.E.) with regard to intrastate rates for collect calls from prisons,<sup>173</sup> we also make clear that our action herein similarly does not preempt state rate caps that may be lower than any rate benchmark proposals for interstate operator services considered, but not adopted in this proceeding. We note, however, that some commenters believe that interstate telecommunications services ratepayers should subsidize providers of operator services whose intrastate operator service rates and surcharges have been capped by a state at a level that is alleged to be "unfair" or which precludes recovery of the carrier's alleged "reasonable" costs and profit.<sup>174</sup> Any such subsidy or cross-subsidization would inhibit competition at the intrastate level, contrary to our policies encouraging competition in all telecommunications markets. We are unaware of any public policy reason why users of interstate operator services should be required to subsidize users of intrastate operator services.<sup>175</sup>

---

<sup>169</sup> Any state requirements inconsistent with the Commission's regulations concerning the provision of payphone service in implementation of Section 276 of the Communications Act are preempted under subsection (c) thereof, 47 U.S.C. § 276(c).

<sup>170</sup> NYDPS Comments at 2 n.1.

<sup>171</sup> See Florida Commission Comments at 6.

<sup>172</sup> See Pennsylvania Commission Initial Comments, late filed July 25, 1996, at 3.

<sup>173</sup> C.U.R.E. Reply Comments at 6.

<sup>174</sup> See, e.g., InVision Comments at 8; Coalition Reply Comments at 8.

<sup>175</sup> See also Comments of APCC in CC Docket No. 96-128, July 1, 1996, at 9 (FCC prescription of a fair, uniform payphone fee applicable to every call will end "the forced dependence on interstate 0+ subsidies that destabilizes the entire payphone industry.").

## IX. 0+ CALLS BY PRISON INMATES

### A. Background

45. In our OSP Reform Notice, we considered calls from inmate-only telephones in prisons, jails and other correctional or similar institutions (hereinafter prisons) separately from 0+ calls from aggregator locations for two primary reasons.

First, neither TOCSIA nor our rules require telephones for use only by prison inmates to be unblocked. Thus, callers from these facilities are generally unable to select the carrier of their choice; ordinarily they are limited to the carrier selected by the prison. A disclosure requirement can not directly aid such callers. Second, prisons often install and maintain security equipment for a number of legitimate reasons involving security and other government prerogatives. Given that prisons would likely seek to recover the cost of any equipment employed for legitimate security reasons, we would expect that competitive prices for inmate-only telephone calls from prisons could be higher than the rates of calls from ordinary locations. The record in this proceeding indicates, however, that at least one prison carrier, Gateway, has stated that it is willing and able to provide calls from prisons as well as the standard security equipment at rates comparable to those charged by AT&T, MCI and other large carriers.<sup>176</sup>

We invited comment on whether the public interest would be better served by some remedy other than BPP for prison inmate calling, including requiring oral full price disclosure to the called party before connecting the inmate call.

### B. Discussion

46. We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable to inmate calls. Moreover, requiring BPP for inmate calls in the absence of BPP for 0+ calls might place the cost of implementation on the recipient of such calls, thus exacerbating the problem of high-cost calls. Finally, as the Florida Commission noted, prisons may allow inmates to place calls to pre-approved 800 numbers of their families and legal counsel, or, as the Florida Commission has done, allow them

---

<sup>176</sup> OSP Reform Notice, 11 FCC Rcd at 7301 (footnotes omitted).

to use pre-paid debit cards.<sup>177</sup> Such options would exert downward pressure on high interstate rates for 0+ calls from inmate phones, diminish the ability of a prison and its PIC to set supracompetitive rates, and thus lessen or obviate the need for further federal regulations concerning 0+ rates in this submarket.

47. The Commission has concluded that the definition of aggregator "does not apply to correctional institutions in situations in which they provide inmate-only phones."<sup>178</sup> It does not necessarily follow, however, that we should not adopt consumer protection rules similar to those applicable to providers of 0+ service at aggregator locations. The Commission continues to receive complaints about inmate service providers' practices that result in excessive charges being collected from consumers for interstate collect calls.<sup>179</sup>

48. For the reasons set forth in Section IV above, however, we decline to establish price benchmarks or rate caps. Although, prison authorities have considerable power to ensure that rates are just and reasonable by virtue of the monopoly contracts they confer, they also have the power and the incentive to contract with OSPs that will give them the largest revenues from inmate phones. If we set caps or benchmarks, carriers would have little incentive to contract to offer services at a lower rate. Rather, because rates must be filed with the Commission and must conform to the just and reasonable requirements of Section 201 of the Act, we believe that it is more efficient and less intrusive to proceed on a case-by-case basis, should the rules we adopt herein not lead to reasonable rates for calls from inmate phones.

49. Although we do not require BPP or benchmarks, we do agree with commenters that consumers, in this case the recipients of collect calls from inmates, require additional safeguards to avoid being charged excessive rates from a monopoly provider. We conclude, therefore, that we should require all providers of operator services from inmate-only telephones to identify orally themselves to the party to be billed for any interstate call and orally disclose to such party how, without having to dial a separate number, it may obtain the charge for the first minute of the call and the charge for additional minutes, prior to billing for any interstate call from such a telephone. Just as OSPs may give the party to be billed for an interstate call the option to by-pass receiving such rate information, providers of operator services for interstate calls initiated by a prison inmate similarly may give the party to be billed the option to by-pass receiving rate information. Even if, arguendo, restrictions on all dial-around calls can still be justified for inmate-only telephones, rules requiring providers to identify orally themselves to both parties to a collect call and to disclose to the party to be billed how to obtain specific rate information without charge, can eliminate some of the abusive

---

<sup>177</sup> Florida Commission Comments at 11.

<sup>178</sup> See OSP Reform Notice, 11 FCC Rcd at 7300 n.122, quoting TOCSIA Order.

<sup>179</sup> See, e.g., informal complaint File No. 97-24317 (complaint alleging MCI Telecommunications Corporation overcharged for interstate collect calls from prison inmate phone); File No. 97-20961 (complaint alleging AT&T's practices and charges for interstate collect calls from inmate phones are unreasonable); File No. 97-24319 (complaint about InVision Telecom's monopoly, practices, and high 0+ intrastate and interstate toll rates).

practices that have led to complaints. Specifically, the billed party can decide whether to accept the call and can limit the length of the call.

50. Finally, just as it would be contrary to our policies encouraging competition in all telecommunication markets to have intrastate operator services from aggregator locations subsidized by interstate service ratepayers,<sup>180</sup> it would similarly be an undue burden on interstate commerce to have costs of providing intrastate service to prison inmates cross-subsidized by interstate service ratepayers. We note that most calls by prison inmates appear to be intrastate rather than interstate.<sup>181</sup>

## X. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act (RFA),<sup>182</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the OSP Reform Notice.<sup>183</sup> The Commission sought written public comments on the proposals in the OSP Reform Notice, including on the IRFA.<sup>184</sup> The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996).<sup>185</sup> The Commission is issuing this Order to protect consumers from excessive charges in connection with interstate 0+ operator services for payphone and prison inmate calls by ensuring that they are aware of their right to ascertain the specific cost for such calls so that they may hang up before incurring any charge that they believe is excessive.

---

<sup>180</sup> See supra para. 55.

<sup>181</sup> See C.U.R.E. Reply Comments at 5 ("the vast majority of inmate calling traffic is intrastate").

<sup>182</sup> See 5 U.S.C. § 603.

<sup>183</sup> OSP Reform Notice, 11 FCC Rcd at 7302.

<sup>184</sup> Id. at 7303.

<sup>185</sup> Title II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. § 601 et seq.

## 1. Need for and Objectives of this Report and Order and the Rules Adopted Herein

52. In the 1996 Act, Congress sought to establish "a pro-competitive, de-regulatory national policy framework" for the United States telecommunications industry.<sup>186</sup> One of the principal goals of the telephony provisions of the 1996 Act is promoting increased competition in all telecommunications markets, including those that are already open to competition, particularly long-distance services markets.

53. In this Second Report and Order, we adopt rules requiring carriers to orally disclose to consumers how to obtain the cost of operator services for interstate calls from aggregator locations and from prison inmate-only telephones.<sup>187</sup> The objective of the rules adopted in this Order is to implement as quickly and effectively as possible the national telecommunications policies embodied in the 1996 Act and to promote the development of competitive, deregulated markets envisioned by Congress. In doing so, we are mindful of the balance that Congress struck between this goal of bringing the benefits of competition to all consumers and its concern for the impact of the 1996 Act on small business entities.<sup>188</sup>

## 2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

54. In the OSP Reform Notice, the Commission performed an IRFA.<sup>189</sup> In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have an impact on small business entities as defined by section 601(3) of the RFA.<sup>190</sup> In addition, the IRFA solicited comment on alternatives to the proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding.<sup>191</sup>

## 3. Comments on the IRFA

55. Only one comment specifically addressed the Commission's IRFA. ACTA, a national trade association representing interexchange carriers, strongly supports adoption of a price

---

<sup>186</sup> Joint Explanatory Statement at 113.

<sup>187</sup> See Appendix A.

<sup>188</sup> In this Order, we also consider, but decline to adopt, proposals to establish, price caps, benchmarks, or other price regulation of OSP charges and aggregator surcharges, 0+ in the public domain, and a billed party preference system.

<sup>189</sup> OSP Reform Notice, 11 FCC Rcd at 7302.

<sup>190</sup> Id.

<sup>191</sup> Id. at 7303.

disclosure requirement for all 0+ calls to provide consumers with the information necessary to make informed choices, thus doing away with the need for alternative proposals setting benchmark rates to trigger oral disclosure requirements.<sup>192</sup> ACTA asserts that adoption of the alternative benchmark proposal would lead to anti-competitive and discriminatory results and therefore does not comply with the RFA.<sup>193</sup>

56. In support thereof, ACTA asserts: that basing benchmarks on the rates of the three largest IXC's (the Big Three) is unsound because it ignores greater underlying costs borne by smaller carriers and economic disparities which exist between the Big Three carriers and all other OSPs; that the Big Three may recover their costs through cross-subsidization and arbitrary cost allocations that are possible because of their multi-market operations, whereas small providers can only recover their costs directly through rates charged consumers; that because all or most small carriers will be required to make oral disclosures, the public will be conditioned to associate small providers with excessive rates; that OSPs will be forced to charge rates below the Big Three and below their own costs, plus a reasonable profit, to get consumers to use their services; that the benchmark proposal thus has a confiscatory effect; and, accordingly, the already competitively disadvantaged smaller OSPs will not be able to sustain themselves in the marketplace, contrary to broad general policies seeking greater participation by smaller companies in competing in the OSP market, and the more specific policy that the Commission must apply in its RFA analysis.<sup>194</sup>

57. Further, ACTA contends that proposed benchmark rate elements such as time of day and distance do not affect underlying costs, are contrary to the industry's growing reliance on nationwide flat rates, and are inappropriate and unduly burdensome on small businesses. Moreover, ACTA contends that the list of characteristics proposed by the Commission does not take into account actual costs necessary to compete in the OSP marketplace such as PIFs and commissions, further skewing the competitive environment adversely to small businesses. According to ACTA, a benchmark margin of two to three times that of the Big Three benchmark carriers is needed to cover differences in underlying costs, not the 15 percent margin on which the Commission sought comment. ACTA also contends that the proposed benchmark methodology provides the benchmark carriers with the opportunity to engage in anti-competitive conduct and predatory pricing.<sup>195</sup>

58. Although not specifically filing an IRFA analysis, other commenters oppose adoption of rules that would unduly burden small businesses.<sup>196</sup> Cleartel/ConQuest assert,

---

<sup>192</sup> Initial Regulatory Flexibility Act Analysis, Comments of America's Carriers Telecommunication Association, filed July 17, 1996, at 1.

<sup>193</sup> Id.

<sup>194</sup> Id. at 2-3.

<sup>195</sup> Id. at 4-5.

<sup>196</sup> See, e.g., NTCA Comments at 2-3.

arguendo, that even if a rate benchmark could be justified on the basis of consumer expectations, any standard disclosure that only applies to the smaller OSPs, and not to the three largest, would be arbitrary and discriminatory, would place an uneven burden on smaller OSPs, and would stigmatize all carriers other than the big three for the traveling public.<sup>197</sup> NTCA asserts that industry-wide mandated BPP deployment is not economically feasible and would adversely affect small and rural LECs.<sup>198</sup>

#### **4. Discussion**

59. We agree with ACTA's views in regard to our IRFA and have concluded that the minimum rules adopted herein are necessary to protect consumers and will not unduly burden small OSPs or other small business entities. Such rules will aid consumers, including small business entities, avoid incurring excessive charges for 0+ operator services. The rules also provide OSPs and potential OSP competitors, including small business firms, a level playing field in that they apply equally to all OSPs, and, unlike benchmark proposals, do not discriminate against smaller OSP companies. Further, we are terminating our inquiry into BPP as urged by NTCA on behalf of small and rural LECs. Moreover, as urged by many commenters, including small business entities, we have not adopted various benchmark proposals or other price control rules set forth in this proceeding. Based on the record in this proceeding, we conclude that, contrary to the initial tentative conclusion in OSP Reform Notice, for the Commission to engage in price regulation of OSPs' rates, including benchmark regulation, would involve micro-managing the rates of nondominant carriers, including hundreds of small business companies. Such regulation would be the antithesis of the deregulatory thrust of the Regulatory Flexibility Act and the 1996 Act.

#### **5. Description and Estimates of the Number of Small Entities to Which the Rules Will Apply**

60. The rules adopted require that hundreds of nondominant interexchange carriers implement certain information disclosure procedures regarding their rates, and any related fees of the owners of the premises where the telephone instrument is located. Small entities may feel some economic impact in additional message production, recording costs, and equipment retrofitting or replacement costs due to the policies and rules adopted. Small providers of operator services also may experience greater live operator costs initially until automated terminal equipment and network systems are modified to replace the need for intervention of live operators.

61. For the purposes of this analysis, we examine the relevant definition of "small entity" or "small business" and apply this definition to identify those entities that may be affected by the rules adopted in this Second Report and Order. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the

---

<sup>197</sup> Cleartel/ConQuest Comments at 7-10.

<sup>198</sup> NTCA Reply Comments at 2.



Commission has developed one or more definitions that are appropriate to its activities.<sup>199</sup> A "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (the SBA).<sup>200</sup> The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.<sup>201</sup> We first discuss generally the total number of telephone companies falling within this SIC category. Then, we refine further those estimates and discuss the number of carriers falling within relevant subcategories.

62. Total Number of Telephone Companies Affected. The United States Bureau of the Census ("the Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.<sup>202</sup> This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, operator service providers, pay telephone operators, personal communications service (PCS) providers, covered specialized mobile radio (SMR) providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities, small interexchange carriers, or resellers of interexchange services, because they are not "independently owned and operated."<sup>203</sup> For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms that may be affected by this Order.

63. Wireline Carriers and Service Providers. The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.<sup>204</sup> According to the SBA's definition, a small business telephone company other than a radiotelephone company is

---

<sup>199</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>200</sup> Small Business Act, 15 U.S.C. § 632 (1996).

<sup>201</sup> 13 C.F.R. § 121.201.

<sup>202</sup> United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

<sup>203</sup> 15 U.S.C. § 632(a)(1).

<sup>204</sup> 1992 Census at Firm Size 1-123.

one employing fewer than 1,500 persons.<sup>205</sup> All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities based on these employment statistics. Because it seems certain, however, that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA's definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the decisions and rules adopted in this Order.

64. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of interexchange carriers nationwide of which we are aware appears to be the data that the Commission collects annually in connection with the TRS Worksheet. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.<sup>206</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of interexchange carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity interexchange carriers that may be affected by the decisions and rules adopted in this Order.

65. Resellers. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.<sup>207</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this Order.

---

<sup>205</sup> 13 C.F.R. § 121.201, SIC Code 4812.

<sup>206</sup> Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

<sup>207</sup> Id.

66. Operator Service Providers. Carriers engaged in providing interstate operator services from aggregator locations (OSPs) currently are required under Section 226 of the Communications Act to file and maintain informational tariffs at the Commission. The number of such tariffs on file thus appears to be the most reliable source of information of which we are aware regarding the number of OSPs nationwide, including small business concerns, that will be affected by decisions and rules adopted in this Order. As of August 19, 1997, approximately 630 carriers had informational tariffs on file at the Commission. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of OSPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 630 small entity OSPs that may be affected by the decisions and rules adopted in this Order.

67. Local Exchange Carriers. Consistent with our prior practice, we shall continue to exclude small incumbent providers of local exchange services (LECs) from the definition of "small entity" and "small business concerns" for the purpose of this FRFA. Because any small incumbent LECs that may be subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."<sup>208</sup> Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."<sup>209</sup>

68. Neither the Commission nor the SBA has developed a definition of small LECs. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed above. Our alternative method for estimation utilizes the data that we collect annually in connection with the TRS Worksheet. This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported that they were engaged in the provision of local exchange services.<sup>210</sup> Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than

---

<sup>208</sup> See Local Competition First Report and Order, 11 FCC Rcd 16144-5 at paras. 1328-30, 16150 at para. 1342 (1996). Because LECs generally are subject to regulation as dominant carriers, many LECs have formed separate IXC subsidiaries for their interstate, domestic, interexchange service offerings, presumably to facilitate competition with nondominant IXCs subject to less regulatory constraints.

<sup>209</sup> See id.

<sup>210</sup> Federal Communications Commission, CCB, Industry Analysis Division, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Tbl. 1 (Average Total Telecommunications Revenue Reported by Class of Carrier) (Dec. 1996) (TRS Worksheet).

1,347 small LECs (including small incumbent LECs) that may be affected by the rules adopted in this Order.

69. In addition, the rules adopted in this Order may affect companies that analyze information contained in OSPs' tariffs. The SBA has not developed a definition of small entities specifically applicable to companies that analyze tariff information. The closest applicable definition under SBA rules is for Information Retrieval Services (SIC Category 7375). The Census Bureau reports that, at the end of 1992, there were approximately 618 such firms classified as small entities.<sup>211</sup> This number contains a variety of different types of companies, only some of which analyze tariff information. We are unable at this time to estimate with greater precision the number of such companies and those that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 618 such small entity companies that may be affected by the decisions and rules adopted in this Order.

## **6. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

70. The rules adopted require carriers to disclose audibly to consumers how to obtain the price of a call before it is connected. In this section of the FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this Order.<sup>212</sup> As a part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements.

71. Nondominant interexchange carriers, including small nondominant interexchange carriers, will be required to provide oral information to away-from-home callers, advising them how to obtain the cost of an interstate 0+ call, and similarly to disclose to the party to be billed for collect calls from telephones set aside for use by prison inmates how to obtain the cost of the call before they could be billed for such calls. This change in the manner of conducting their business may require the use of technical, operational, accounting, billing, and legal skills.

## **7. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives**

72. In this section, we describe the steps taken to minimize the economic impact of our decisions on small entities and small incumbent IXC's, including the significant alternatives considered and rejected.<sup>213</sup> To the extent that any statement contained in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

---

<sup>211</sup> U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Report, Table 2D, SIC Code 7375 (Bureau of the Census data adapted by the Office of Advocacy of the U.S. Small Business Administration).

<sup>212</sup> See 5 U.S.C. § 604(a)(4).

<sup>213</sup> See *id.* at § 604(a)(5).

73. We believe that our action requiring carriers to orally disclose how to obtain the price of their interstate 0+ operator services up front at the point of purchase will facilitate the development of increased competition in the interstate, domestic, interexchange market, thereby benefitting all consumers, some of which are small business entities. Specifically, we find that the rules adopted herein with respect to interstate, domestic, interexchange 0+ services will enhance competition among OSPs, promote competitive market conditions, and achieve other objectives that are in the public interest, including establishing market conditions that more closely resemble an unregulated environment. The decision not to require detariffing of OSP informational tariffs will also allow businesses, including small business entities, that audit and analyze information contained in tariffs to continue.

74. We have rejected several alternatives to the additional oral disclosure requirements and rules adopted herein, including proposals (1) to establish a costly billed party preference system for 0+ calls from aggregator and prison locations; (2) to micro-manage nondominant carriers' prices for such calls, including proposals to cap rates, establish annual FCC benchmarks, and to require cost justification for rates that exceed such benchmarks; (3) requiring oral warnings to prospective consumers comparing a carrier's rates with lower rates of the largest carriers; and (4) mandating 0+ in the public domain. Rejection of these alternatives helps to ensure that small carriers will not be unnecessarily burdened. The rules adopted herein are applicable only to limited interexchange 0+ calls from payphones, or other aggregator locations, and from inmate phones in correctional institutions. They are not applicable to international calls, intrastate calls, and interstate 0+ calls made by callers from their regular home or business. The rules also are inapplicable to calls that are initiated by dialing an access code prefix, such as 10333 or 1-800-877-8000, whereby callers may circumvent placing the call through the long-distance carrier that is presubscribed for that line.

## **8. Report to Congress**

75. The Commission shall send a copy of this Final Regulatory Flexibility Act Analysis, along with this Second Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

### **B. Final Paperwork Reduction Act of 1995 Regulatory Analysis**

76. This Second Report and Order contains a modified information collection. As required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13,<sup>214</sup> the OSP Reform Notice invited the general public and the Office of Management and Budget (OMB) to comment on proposed changes to the Commission's information collection requirements contained therein.<sup>215</sup>

<sup>214</sup> 44 U.S.C. §§ 3501 *et seq.*

<sup>215</sup> OSP Reform Notice, 11 FCC Rcd at 7303.

The changes to our information collection requirements on which we sought comment in the OSP Reform Notice included: (1) the elimination of tariff filings by nondominant interexchange carriers for interstate, domestic, interexchange operator services from aggregator locations;<sup>216</sup> and (2) requiring such carriers to disclose the cost of a call to consumers if the call was made using that carrier.<sup>217</sup>

77. On September 8, 1996, OMB approved, with comments, the proposed changes to our information collection requirements contained in OSP Reform Notice, in accordance with the Paperwork Reduction Act.<sup>218</sup> OMB asked us to address whether the consumer would not be better served by requiring all OSPs to inform the caller of the cost of the call "regardless of any benchmark."<sup>219</sup> Because we have concluded that we should adopt a disclosure requirement applicable to all OSPs, and not a disclosure rule based on benchmark rates,<sup>220</sup> concerns that OMB expressed in this regard have been met or rendered moot.<sup>221</sup>

78. OMB also stated that we should calculate and include, as a cost burden, the cost of installing the systems that will inform the consumer of the cost of a call.<sup>222</sup> Although we invited comment on the costs and benefits of requiring all OSPs to disclose their rates on all 0+ calls from aggregator locations, the cost information we received was generally quite conclusionary rather than specific in nature.<sup>223</sup> The specific cost data filed by some parties vary. Intellicall states that its ULTRATEL store-and-forward payphones have no internal memory left to accommodate additional

---

<sup>216</sup> Id. at 7297.

<sup>217</sup> Id. at 7298.

<sup>218</sup> Notice of Office of Management and Budget Action, OMB No. 3060-0717 (September 8, 1996).

<sup>219</sup> Id. at 2.

<sup>220</sup> See supra para. 30.

<sup>221</sup> In asking how consumers would be informed of the benchmark charge, OMB stated that the Commission should not assume that members of the public would know such benchmark cost and that "[t]heir knowledge will, in general, be limited to the cost of services provided by their interlata carrier of choice." Notice of Office of Management and Budget Action, OMB No. 3060-0717, supra at 2.

<sup>222</sup> Id.

<sup>223</sup> See, e.g., GTE Comments at 7 (Average work time per call to determine and quote cost prior to call completion would "likely double, increasing the operator surcharge per call accordingly"). "For both mechanized and operator-handled 0+calls, quoting the call cost to consumers would significantly increase call holding time and necessitate additional trunking facilities.") Id. Because call costs would have to be quoted to the billed party, "additional equipment would be required for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls." Id. at 7-8. Developing an automated system that can quote a rate at the point the call is made "will significantly increase the OSP's cost." MCI Comments at 4. Price disclosure "on each call is extremely costly." Pacific Telesis Comments at 3.

functionalities, let alone voluminous rate structures [and] cannot be retrofitted . . . to increase their memory capacity."<sup>224</sup> With respect to its new generation ASTRATEL store-and-forward payphones, Intellicall estimates that "it would cost approximately \$200,000 and would require between eight and fourteen months, barring unforeseen circumstances to, among other things, develop, test, and \_debug\_ the computer software necessary to install the rate structures into the payphone memory, and \_import\_ the rate structures into the payphone memory."<sup>225</sup> GTE states that "[m]echanized equipment could possibly be enhanced to quote rates prior to the call connection, but this would require significant capital outlays and would involve several years lead time to accomplish."<sup>226</sup> GTE further states that its "current mechanized equipment (costing approximately \$22 million in 1993) would most likely require a complete replacement for such a modification."<sup>227</sup> MCI estimates that it would cost an additional \$0.40 per call if all calls have to be sent to a live operator in the near term.<sup>228</sup> Sprint estimates that the labor cost of a rate disclosure would approximate \$0.35 per call.<sup>229</sup> U S WEST estimates that to mechanize a system that "would allow for a data base dip for every 0+/- call" would add about \$0.50 to each call.<sup>230</sup> Thus, specific cost data of record is sparse and cost estimates of those who have commented vary considerably.

79. The new rules adopted herein require OSPs to orally advise consumers of their current right to obtain rate quotes at the time of purchase on interstate, domestic, interexchange 0+ calls. The rules are inapplicable to 0- calls. Further, we are not requiring real time rate quotes on every 0+ call, only when callers request such price information at the time of purchase. Most if not all who have commented agree with our conclusion that the cost of installing the systems necessary to implement the rules adopted herein should prove to be much less than the foregoing estimates and much less than the estimated one billion dollar cost of implementing an alternative billed party preference routing system for OSP interstate calls.

80. In this Order, we adopt certain changes to our information collection requirements on which we sought comment in the OSP Reform Notice. Specifically, we have adopted rules governing the filing of informational tariffs by OSPs for their interstate, domestic, interexchange 0+

---

<sup>224</sup> Letter from Judith St. Ledger-Roty, counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (March 21, 1997) at 3.

<sup>225</sup> Id. at 4.

<sup>226</sup> GTE Comments at 7.

<sup>227</sup> Id.

<sup>228</sup> MCI Comments at 3-4.

<sup>229</sup> Sprint Comments at 4 n.3.

<sup>230</sup> US WEST Comments at 10.

services.<sup>231</sup> Implementation of these requirements will be subject to approval by OMB as prescribed by the Paperwork Reduction Act.

## XI. CONCLUSION

81. We conclude that we should amend our rules to require OSPs to provide additional oral information to away-from-home callers, disclosing the cost of a call, including any aggregator surcharge for a 0+ interstate call from that aggregator location, before such a call is connected, at the consumer's option whether to receive such cost information. We also amend our rules to require carriers providing interstate service to prison inmates to orally disclose their identity to the party to be billed for such calls and, if such party elects to receive rate quotes for the call, to orally disclose the charges for the call before connecting the call. Finally, we deny petitions for reconsideration of the Phase I Order in this proceeding and terminate this proceeding.

## XII. ORDERING CLAUSES

82. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 10, 201-205, 215, 218, 226, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 160, 201-205, 215, 218, 226, 254, that the policies, rules, and requirements set forth herein ARE ADOPTED.

83. IT IS FURTHER ORDERED that 47 C.F.R. Part 64, Subpart G IS AMENDED as set forth in Appendix A, effective July 1, 1998, except that the effectiveness of Section 64.703(a)(4) and Section 64.710 is stayed with respect to embedded store-and-forward telephone equipment until fifteen months thereafter.

84. IT IS FURTHER ORDERED that the request by Intellicall, Inc., filed March 21, 1997, seeking exemption of its ULTRATEL payphones from the rules adopted herein IS DENIED.

85. IT IS FURTHER ORDERED that the petitions for reconsideration of the Commission's Phase I Order in this docket, filed by Competitive Telecommunications Association, International Telecharge Incorporated, LDDS Communications, Inc., MCI Telecommunications Corp., PhoneTel Technologies, Inc., Polar Communications Corporation, Southwestern Bell Telephone Company, and Value-Added Communications ARE DENIED.

86. IT IS FURTHER ORDERED that the Office of Public Affairs, Reference Operations Division, shall mail a copy of this Report and Order to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. § 603(a)(1981). The Secretary shall cause a summary of this Order to appear in the Federal Register.

---

<sup>231</sup> See Appendix A.



FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary

**APPENDIX A****Rule Amendments****PART 64 - MISCELLANEOUS RULES  
RELATING TO COMMON CARRIERS**

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 201, 218, 226, 228, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 201, 218, 226, 228, unless otherwise noted.

2. Part 64, Subpart G, Section 64.703 is amended by removing the word "and" at the end of subsection (a)(2) and the period at the end of subsection (a)(3)(iii), and by adding a semicolon and the word "and" at the end of subsection (a)(3)(iii), and by adding the following new subsection after subsection (a)(3):

(4) Disclose, audibly and distinctly to the consumer, at no charge and before connecting any interstate, domestic, interexchange 0+ call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further oral advice to the consumer on how to proceed to make the call. The oral disclosure required in this subsection shall instruct consumers that they may obtain applicable rate and surcharge quotations either, at the option of the provider of operator services, by dialing no more than two digits or by remaining on the line.

3. Part 64, Subpart G, is further amended by adding the following Section 64.709:

**§ 64.709 Informational tariffs.**

(a) Informational tariffs filed pursuant to 47 U.S.C. § 226(h)(1)(A) shall contain specific rates expressed in dollars and cents for each interstate operator service of the carrier and shall also contain applicable per call aggregator surcharges or other per call fees, if any, collected from consumers by the carrier or any other entity.

(b) Per call fees, if any, billed on behalf of aggregators or others, shall be specified in informational tariffs in dollars and cents.

(c) In order to remove all doubt as to their proper application, all informational tariffs must contain clear and explicit explanatory statements regarding the rates, i.e., the tariffed price per unit of service, and the regulations governing the offering of service in that tariff.

(d) Informational tariffs shall be accompanied by a cover letter, addressed to the Secretary of the Commission, explaining the purpose of the filing.

(1) The original of the cover letter shall be submitted to the Secretary without attachments, along with FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, Pennsylvania.

(2) Copies of the cover letter and the attachments shall be submitted to the Secretary's Office, the Commission's contractor for public records duplication, and the Chief, Tariff and Price Analysis Branch, Competitive Pricing Division.

(e) Any changes to the tariff shall be submitted under a new cover letter with a complete copy of the tariff, including changes.

(1) Changes to a tariff shall be explained in the cover letter but need not be symbolized on the tariff pages.

(2) Revised tariffs shall be filed pursuant to the procedures specified in this section.

4. Part 64, Subpart G, is further amended by adding the following new Section 64.710:

**§ 64.710 Operator services for prison inmate phones**

(a) Each provider of inmate operator services shall:

(1) Identify itself, audibly and distinctly, to the consumer before connecting any interstate, domestic, interexchange telephone call and disclose immediately thereafter how the consumer may obtain rate quotations, by dialing no more than two digits or remaining on the line, for the first minute of the call and for additional minutes, before providing further oral advice to the consumer how to proceed to make the call;

(2) Permit the consumer to terminate the telephone call at no charge before the call is connected; and

(3) Disclose immediately to the consumer, upon request and at no charge to the consumer--

(i) The methods by which its rates or charges for the call will be collected;  
and

(ii) The methods by which complaints concerning such rates, charges or collection practices will be resolved.

(b) As used in this subpart:

(1) *Consumer* means the party to be billed for any interstate, domestic, interexchange 0+ call from an inmate telephone;

(2) *Inmate telephone* means a telephone instrument set aside by authorities of a prison or other correctional institution for use by inmates.

(3) *Inmate operator services* means any interstate telecommunications service initiated from an inmate telephone that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than:

(i) Automatic completion with billing to the telephone from which the call originated; or

(ii) Completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer;

(4) *Provider of inmate operator services* means any common carrier that provides outbound interstate, domestic, interexchange operator services from inmate telephones.

**APPENDIX B**

**Parties Filing Comments**

Actel, Inc. (ACTEL)

America's Carriers Telecommunication Association (ACTA)

American Friends Service Committee (AFSC)

American Network Exchange, Inc. (AMNEX)

American Public Communications Council (APCC)

Ameritech

AT&T Corp. (AT&T)

Bell Atlantic Telephone Companies, BellSouth Corporation, and NYNEX Telephone Companies (Bell Atlantic/BellSouth/NYNEX)

People of the State of California and the Public Utilities Commission of the State of California (California Commission)

Citizens United for Rehabilitation of Errants (C.U.R.E.)

Cleartel Communications, Inc. and ConQuest Operator Services Corp. (Cleartel/ConQuest)

Communications Central Inc. (CCI)

Competitive Telecommunications Association (CompTel)

Consolidated Communications Public Services Inc. (CCPS)

Gateway Technologies, Inc. (Gateway)

GTE Service Corporation (GTE)

Hotel Communications, Inc. (HCI)

Inmate Calling Services Providers Coalition (Coalition)

Intellicall Companies (Intellicall)

InVision Telecom, Inc. (InVision)

MCI Telecommunications Corporation (MCI)

National Association of Attorneys General (the Attorneys General)

National Association of Regulatory Utility Commissioners (NARUC)

National Telephone Cooperative Association (NTCA)

New Jersey Payphone Association (NJPA)

New York State Consumer Protection Board (NYSCPB)

New York State Department of Public Service (NYDPS)

North Dakota Public Service Commission (North Dakota Commission)

Office of the Ohio Consumers' Counsel (OCC)

Oncor Communications, Inc. (Oncor)

One Call Communications, Inc. d/b/a Opticom (Opticom)

Operator Service Company (OSC)

Pacific Telesis Group (Pacific Telesis)

Public Utilities Commission of Ohio (Ohio Commission)

Southwestern Bell Telephone Company (SWBT)

Sprint Corporation (Sprint)

Telecommunications Resellers Association (TRA)

U.S. Long Distance, Inc. (USLD)

U.S. Osiris Corporation (USOC)

U S WEST, Inc. (U S WEST)

Virginia State Corporation Commission Staff (Virginia Commission)

**Parties Filing Reply Comments**

APCC

AT&T

Bell Atlantic/BellSouth/NYNEX

CCI

CompTel

C.U.R.E.

Digital Network Services, Inc. (DNSI)

Gateway

GTE

Coalition

Intellicall, Inc., Intellicall Operator Services, Inc., Network Operator Services, Inc. (Companies)

InVision

State of Maine Public Utilities Commission, State of Montana Public Service Commission, New Mexico  
State Corporation Commission, State of Vermont Department of Public Service

MCI

NTCA

OCC

Oncor

Pacific Telesis

Peoples Telephone Company, Inc. (Peoples)

Sprint

SWBT

TRA



Teltrust Communications Services, Inc. (Teltrust)

U S WEST

**Commenters Filing Late or Ex Parte** (Not inclusive)

AT&T

Competitive Telecommunications Association (CompTel)

Martha Dickerson

Richard Foley

Gateway Technologies, Inc. (Gateway)

Inmate Calling Services Providers Coalition (Coalition)

Intellicall, Inc. (Intellilcall)

Omniphone, Inc.

State of California Department of General Services, Telecommunications Division

State of California Department of Corrections

**Parties Filing Comments or Reply Comments Pursuant to October 10, 1996 Public Notice**

AMMEX

APPC

AT&T

Bell Atlantic,BellSouth,NYNEX

Consolidated Communications Operator Services, Inc. (CCOS)

California Commission

Coalition

CompTel

Intellicall

InVision

Metropolitan Airports Authority (Airports Authority)

MCI

Oncor

Opticom

Pacific Telesis

Peoples

PIC, Inc.

Sprint

SWBT

Teltrust

USLD

USOC

U S WEST

**Petitioners Filing for Reconsideration of Phase I Order:**

CompTel

International Telecharge Incorporated (ITI)

LDDS Communications, Inc. (LDDS)

MCI

PhoneTel Technologies, Inc. (PhoneTel)

Polar Communications Corporation (Polar)

SWBT

Value-Added Communications (VAC)

**Oppositions or Comments re Petitions for Reconsideration:**

AT&T's Opposition filed March 11, 1993

APPC Comments filed March 19, 1993

Intellicall Comments filed March 19, 1993

LinkUSA Corporation Comments filed March 19, 1993

Opticom Comments filed March 22, 1993

Sprint Opposition filed March 19, 1993

SWBT Comments filed March 10, 1993

**Other responsive pleadings:**

APPC Reply filed March 30, 1993

AT&T Reply filed March 29, 1993

Capital Network System, Inc. (CNS) Reply to AT&T's Opposition to Petitions for  
Reconsideration, filed Apr. 1, 1993

CompTel Reply filed March 29, 1993

LDDS Reply filed March 29, 1993

MCI Reply filed April 1, 1993

PhoneTel Reply filed March. 29, 1993

## APPENDIX C

## COMMENT SUMMARY

## A. COMMENTS ON ADDITIONAL ORAL BRANDING

Commenters Opposed to Universal Oral Rate Branding

1. AT&T, MCI, and Sprint maintain that the largest OSPs should not have to pay additional costs, and their customers should not have to bear unnecessary delays, merely because some OSPs charge prices for 0+ calls that are higher than those of the largest carriers.<sup>232</sup> AT&T states that no current technology enables OSPs to provide automatic rate information on all 0+ calls from payphones and other aggregator locations and that the use of live operators as an alternative would cause substantial post-dial delays, degrading service for consumers. AT&T also contends that such a requirement would increase costs for operator time and systems and require OSPs to pay substantial increased access charges, and thus a rate information requirement on all 0+ calls would require consumers to pay more for a less satisfactory service.<sup>233</sup> MCI asserts that, in order to disclose the rates for a call, "[a]ll calls may have to be sent to a live operator, in the near term" and estimates that this would cost an additional \$0.40 per call.<sup>234</sup> Noting that all providers of operator services currently must disclose their rates on request under Section 64.703(a)(3) of the Commission's Rules, MCI maintains that the proposed rule would significantly increase the burden on OSPs, without significantly improving the protection afforded consumers under the current rule, and that the proposed requirement is not needed.<sup>235</sup> If the Commission chooses to adopt a requirement for rate information, MCI maintains that offering the choice of getting a quote by pressing one of the keys on the telephone key pad "is more convenient to customers and less expensive to provide than other announcement alternatives."<sup>236</sup> According to MCI, "giving call-specific quotes on all calls would require expensive development and high continuing costs (e.g. access charges) and would not provide commensurate consumer benefits."<sup>237</sup>

2. Other commenters similarly contend that a universal rate disclosure requirement would "penalize the service quality of the good actors in the industry who already are charging rates that are in line

---

<sup>232</sup> AT&T Comments at 4; AT&T Reply, filed December 3, 1996, at 2; MCI Comments at 3-4; Sprint Reply Comments at 5-6; Sprint Reply Comments, filed December 3, 1996, at 1.

<sup>233</sup> AT&T Reply, filed December 3, 1996, at 1-2.

<sup>234</sup> MCI Comments at 3.

<sup>235</sup> *Id.* at 3-4. Section 64.703(a) provides, in pertinent part, that each provider of operator services shall "[d]isclose immediate to consumer, upon request and at no charge to the consumer--(i) A quotation of its rates or charges for the call . . ."

<sup>236</sup> Letter from Leonard S. Sawicki, Director FCC Affairs, MCI, to William F. Caton, Secretary, Federal Communications Commission, June 20, 1997.

<sup>237</sup> *Id.*

with consumer expectations."<sup>238</sup> They assert that such a requirement will only operate to increase the price of 0+ calls and burden an entire industry with "additional, totally unnecessary" costs, and that such a "total industry/total market" approach to the problem of price-gouging "is simply not in the public interest."<sup>239</sup>

3. GTE maintains that current Operator Service System (OSS) call rating systems cannot "rate quote the specific calls in question" and that none of the 0+ calls of its domestic telephone companies handled on a mechanized basis (about 80%) or on a typical operator-handled basis are currently rated by the OSS.<sup>240</sup> GTE further maintains that, while it may be possible to enhance mechanized equipment to quote rates prior to the call, this likely would require significant capital outlays and take several years lead time to accomplish; and that its current mechanized equipment (costing approximately \$22 million in 1993) would most likely require a complete replacement for such a modification.<sup>241</sup> GTE asserts that for calls handled by an operator, the average work time per call to determine and quote cost prior to call completion would likely double, increasing the operator surcharge per call accordingly; and that for both mechanized and operator-handled 0+ calls, quoting the call cost to consumers would significantly increase call holding time and necessitate additional trunking facilities.<sup>242</sup> GTE further maintains that, because call costs would have to be quoted to the billed party, the process would be further complicated, requiring additional equipment for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls.<sup>243</sup> GTE believes most other OSPs would report similar situations when assessing their equipment for enhancement to quote such call costs and that there would be little or no public benefit if these costs were mandated to all OSPs.<sup>244</sup> If disclosure of rate information is required, quoting rates for maximum or average duration might have no relation to the call being placed and thus would distort the customer's perspective. Accordingly, GTE maintains that any mandated disclosures should quote the rate for the first minute and additional minutes, not average rates.<sup>245</sup>

4. The Metropolitan Washington Airports Authority (Airports Authority) states that the problem of excessive payphone charges does not exist at Washington National and Dulles airports because it "has not and would not accept a bid for payphone services at rates that exceed established industry norms."<sup>246</sup> The Airports Authority maintains that a system of on-demand call rating would serve, in most cases, merely to make payphone service less convenient and less efficient at both airports.<sup>247</sup> The view of

---

<sup>238</sup> Peoples Comments, filed November 13, 1996, at 2.

<sup>239</sup> U S WEST Comments, filed November 13, 1996, at 4.

<sup>240</sup> GTE Comments at 7.

<sup>241</sup> Id.

<sup>242</sup> Id.

<sup>243</sup> Id.

<sup>244</sup> Id. at 8.

<sup>245</sup> Id.

<sup>246</sup> Comments of Airports Authority, filed November 13, 1996, at 4.

<sup>247</sup> Id. at 3-4.

the New York State Consumer Protection Board (NYSCPB) is that establishing benchmarks at levels no higher than the highest rates charged by AT&T, MCI and Sprint is preferable to requiring companies charging competitive rates to automatically disclose such prices to all consumers.<sup>248</sup>

5. Intellicall asserts that the significant associated costs and administrative burdens imposed upon the manufacturers and payphone providers "strongly militate against imposing any specific granular requirement on these entities."<sup>249</sup> According to Intellicall, in addition to being operationally burdensome and costly, universal rate disclosure is impractical and technically infeasible.<sup>250</sup> Intellicall asserts that the costs of implementing a mandatory, real-time exact audible rate disclosure requirement would be prohibitive with respect to both store-and-forward and network-based payphones.<sup>251</sup> If the Commission should require some form of rate disclosure, Intellicall urges a less granular approach, *e.g.*, quoting the maximum rate (initial and additional periods) for a particular destination class of calls, which alternative is more readily implementable from a technical perspective and would avoid stranding investment in store-and-forward pay telephones.<sup>252</sup> Intellicall's view, however, is that "given the wide variation in rates for different call types and the prevalence of distance-sensitive rates, it would be impossible to provide an 'average' or 'maximum' quote that is both accurate and informative to the caller."<sup>253</sup> In addition, Intellicall asserts that such information "would have to be provided on every call -- including 0+ intraLATA and 0+ local calls -- which could be even more misleading to callers."<sup>254</sup>

6. American Public Communications Counsel (APCC) states that "[m]anufacturers indicate that providing a complete set of rate tables for operator assisted calls within each payphone would place such huge demands on available memory capacity that the cost of such an implementation at store-and-forward payphones would be prohibitive for new payphones as well as for the installed base."<sup>255</sup> Pacific Telesis agrees with "the near unanimous view that currently no technology exists that would provide on demand call rating information."<sup>256</sup> MCI concurs in this assessment and states that "[t]he only current method of providing information on demand is through a live operator."<sup>257</sup>

---

<sup>248</sup> NYSCPB Comments at 5-6.

<sup>249</sup> Intellicall Comments at 12.

<sup>250</sup> Intellicall Reply Comments, filed December 3, 1996, at 2.

<sup>251</sup> *Id.* at 3.

<sup>252</sup> Intellicall Comments at 15. *See also* Joint Reply Comments of Intellicall and Network Operator Services, Inc. at 20 (Disclosure of maximum rates for initial and subsequent minutes of use approach provides "unique benefit in that existing equipment need not be replaced.").

<sup>253</sup> Letter from Steven A. Augustino, counsel for Intellicall, to William F. Caton, Secretary, Federal Communications Commission, June 12, 1997, at 2.

<sup>254</sup> *Id.*

<sup>255</sup> APCC Comments, filed November 13, 1996, at 3-4.

<sup>256</sup> Pacific Telesis Reply Comments, filed December 3, 1996, at 2.

<sup>257</sup> MCI Comments, filed November 13, 1996, at 3.

7. US WEST maintains that, to the extent that the current rules may be insufficient to protect consumers, the challenge is primarily in the area of consumer education, not further regulatory mandates.<sup>258</sup> U S WEST opposes the imposition of mandatory rate disclosures on all 0+ calls and maintains that "[t]he Commission should deal with malcreants in this market . . . through enforcement activities."<sup>259</sup> U S WEST maintains that any mandate that ubiquitous rate information disclosures be made of every 0+ call from any aggregator station is not supported by general market demand, logic, or sound public policy theory and asserts that carriers should not be expected to expend substantial sums of money to remedy persistent consumer "head in the sand" behavior.<sup>260</sup> If, the Commission adopts rules requiring ubiquitous rate disclosure messages, U S WEST asserts that such messages should be required to do no more than provide the consumer the opportunity to stay on the line to secure rate information; that the particular presentation of the rate information should be left up to the OSP providing the service; that this model is capable of fairly easy implementation, access and use, and represents the most targeted model and, thus, "the model most in the public interest."<sup>261</sup> If a caller was not interested in rate quotes, the caller could bypass receiving any rate information by proceeding with the call through either an automated or live process.<sup>262</sup>

8. AMNEX contends that "given the costs and complexity associated with implementing per call pricing announcements," the Commission's proposal "is not practical."<sup>263</sup> AMNEX, echoing the comments of other parties, asserts that "[t]he Commission's proposal would require the creation and maintenance of a very expensive, very large, dedicated database processor" that would require daily updating to account for rate changes, although such a database does not currently exist.<sup>264</sup> BA/BS/NYNEX contend that "[t]here is no indication that consumers want per-call price disclosure or that they would view it as an improvement to existing 0+ call services."<sup>265</sup>

9. The IPTA contends that any rate disclosure on operator service calls would have to apply to all operator service calls, including 10XXX, 950, and 1-800 access code calls, and not solely presubscribed 0+ calls.<sup>266</sup> The IPTA further argues that because OSPs would be unable to distinguish between an access code call and a 0+ call, the imposition of a mandated rate quote on 0+ calls would require OSPs to state the applicable rate on every call, increase call setup time, and provide unnecessary information to callers that

---

<sup>258</sup> Reply Comments, filed December 3, 1996, at 2.

<sup>259</sup> Id. at 6.

<sup>260</sup> U S WEST Comments, filed November 13, 1996, at 22.

<sup>261</sup> Id. at 22-23.

<sup>262</sup> U S WEST Reply Comments, filed December 3, 1996, at 1.

<sup>263</sup> AMNEX Comments, filed November 13, 1996, at 3.

<sup>264</sup> Id. at 2; see also BA/BS/NYNEX Comments, filed November 13, 1996, at 4.

<sup>265</sup> BA/BS/NYNEX Comments, filed November 13, 1996, at 4.

<sup>266</sup> IPTA Comments, received July 18, 1996, at 6.

dial access code operator service calls.<sup>267</sup> InVision Telecom, Inc. (InVision) states that it "does not believe that it would be in the public interest to force consumers to listen to a price disclosure they have no desire to hear."<sup>268</sup> InVision further contends that, "[s]pecifically, in the inmate environment consumers typically receive multiple calls from the same inmate, making a rate quote preceding each call repetitive and unnecessary."<sup>269</sup>

10. A number of commenters allege that a significant barrier to the imposition of an oral rate branding requirement is the dialing delay.<sup>270</sup> Peoples argues that "[a]ny requirement for mandatory price disclosure of prices that already are in line with consumer expectations, prior to connecting these calls, will only cause greater distress for the consumer that expects a payphone call to be connected quickly without any unnecessary delay."<sup>271</sup> AMNEX argues that the necessary development of a database which would contain various call rates would "add from ten to fifteen seconds to the duration of the call, which would tie up trunks longer, increase access costs and require a higher number of trunks to serve the same number of calls."<sup>272</sup> Oncor argues, that it is "highly unlikely that OSP rate disclosures could be provided in a manner which would increase call completion time by only 1.5 to 3 seconds."<sup>273</sup>

11. In response to the Common Carrier Bureau's request for further comment on whether there are any industries in which price disclosure to consumers at the point of purchase is not the normal practice, Sprint, BA/BS/NYNEX, and MCI cite the electric, gas, and water utility services as applicable examples.<sup>274</sup> Sprint further cites the examples of auto and appliance repair shops and grocery stores which use scanners to register sales.<sup>275</sup> Citing provisions of TOCSIA, Oncor states that none of the referenced industries is "subject to more comprehensive requirements to ensure consumers' rights to price information at the time of service than the interstate 0+ calling industry."<sup>276</sup>

12. With respect to the Bureau's inquiry regarding whether there are any telecommunications markets outside of the U.S. that already make use of price disclosure prior to call completion, the majority of

---

<sup>267</sup> Id.

<sup>268</sup> InVision Comments, filed November 13, 1996, at 5.

<sup>269</sup> Id.

<sup>270</sup> See, e.g., MCI Comments, filed November 13, 1996, at 3-4 ("customers indicated that the number one reason for dissatisfaction with 0+ operator services was that the call takes too long to set up.") Id. at 4.

<sup>271</sup> Peoples Comments, filed November 13, 1996, at 3.

<sup>272</sup> AMNEX Comments, filed November 13, 1996, at 4.

<sup>273</sup> Oncor Comments, filed November 13, 1996, at 5.

<sup>274</sup> Sprint Comments, filed November 13, 1996, at 1, 3; BA/BS/NYNEX Comments, filed November 13, 1996 at 1; MCI Comments, filed November 13, 1996, at 2.

<sup>275</sup> Sprint Comments, filed November 13, 1996, at 1, 3-4.

<sup>276</sup> Oncor Comments, filed November 13, 1996, at 3.



parties either declined to answer this question<sup>277</sup>, or were unaware of any instances of price disclosure prior to call completion.<sup>278</sup> BA/BS/NYNEX state that "as far as we have been able to determine . . . there are no communications markets that use price disclosure prior to completion of 0+ calls."<sup>279</sup> U S WEST does acknowledge that there are "smart payphones [which] contain a type of device that allows callers making certain types of calls (i.e.; cash or telephone debit cards) to know that the monetary value of their cash deposit or debit card is being used up."<sup>280</sup> U S WEST argues that this type of technology is present in other markets, including the United Kingdom, and that beyond these technological innovations, it is unaware of any additional technologies supporting on-demand call rating information.<sup>281</sup> Southwestern Bell Telephone Company (SWBT) contends that although "[i]f a customer calls the operator and requests a rate, the technology is in place within SWBT to quote the SWBT rate for any call within the serving area . . . there is no mechanized system for real-time quotation for 0+ calls."<sup>282</sup>

13. APCC contends that, "[i]f the Commission decides to impose a rate-disclosure-on demand requirement on all 0+ calls, regardless of the applicable rate, then those [payphone service providers] that provide store-and-forward operator services could incur crippling cost burdens."<sup>283</sup> APCC suggests that the Commission should mitigate the financial impact of universal rate disclosure, through the adoption of a requirement for disclosure on demand rather than automatic disclosure of rates.<sup>284</sup> Teltrust Communications Services, Inc. (Teltrust) agrees with this assertion, arguing that its switch vendor, "has stated that implementation of real-time audible rate disclosure would require a major software upgrade," which would "result in significant cost to Teltrust and other carriers."<sup>285</sup> Other commenters agree, that, especially with respect to "store-and-forward payphones", rate disclosures would be technically infeasible and necessitate forced retirement of existing equipment.<sup>286</sup> USOC contends that its "embedded base equipment at hotel locations is not capable of providing rates on a real-time basis. . . [i]n order to implement real-time rate quotes on all calls, site equipment would have to be changed completely."<sup>287</sup> Intellicall requests that its ULTRATEL store-and-forward payphones be exempted from a proposed requirement that rate quotes be

---

<sup>277</sup> See APCC Comments, filed November 13, 1996, at 4; see generally Peoples Comments, filed November 13, 1996; AMNEX Comments, filed November 13, 1996 (commenters did not address the question).

<sup>278</sup> See Sprint Comments, filed November 13, 1996, at 1; MCI Comments, filed November 13, 1996, at 3.

<sup>279</sup> BA/BS/NYNEX Comments, filed November 13, 1996, at 3.

<sup>280</sup> U S WEST Comments, filed November 13, 1996, at 15.

<sup>281</sup> Id. at 15-16.

<sup>282</sup> SWBT Comments, filed November 13, 1996, at 3.

<sup>283</sup> APCC Comments, filed November 13, 1996, at 8 (emphasis in original).

<sup>284</sup> Id.

<sup>285</sup> Teltrust Comments, filed November 13, 1996, at 3.

<sup>286</sup> Intellicall Reply at 17-18.

<sup>287</sup> USOC Comments, filed November 13, 1996, at 6.

provided to callers, without their having to re-dial a second number, asserting that such payphones lack sufficient internal memory to be retrofitted to do so.<sup>288</sup>

#### Commenters Supporting Universal Oral Rate Branding

14. Opticom asserts that the Commission's proposal to impose a requirement on all OSPs to disclose orally their rates to consumers when a call is placed could immediately address many of the concerns prompting the consideration of BPP and at a much lower cost to consumers and carriers.<sup>289</sup> Moreover, according to Opticom, the costs associated with a disclosure requirement would be minimal and most OSPs already have the technology to allow for full disclosure when a call is made and prior to the time charges are incurred.<sup>290</sup> Opticom asserts that: the concept of cost is fundamental to a healthy marketplace; access to cost information prior to purchase is expected by members of the consuming public; and that there are two technological systems currently capable of providing on-demand cost information to consumers purchasing operator services.<sup>291</sup> Opticom states that it currently uses voice file technology to brand its operator service calls; that such technology would not require the purchase of any new hardware or software but that various voice files would have to be developed for each on-demand rate at an approximate cost of \$500 per voice file; that such technology could be developed and implemented in less than 7 months but that most OSPs have rating complexities, such as mileage or time of day sensitivity, that exceed such technology's capabilities.<sup>292</sup> Opticom also identified a second type of technology system which it states is "fairly mature and well suited for the purpose of providing on-demand call rating information," i.e., voice annunciators or text-to-speech converters, the same technology used for annunciating numbers at the end of a directory assistance call.<sup>293</sup> Opticom estimates that it would take approximately two people working between eight and eighteen months or "two man years" to develop the necessary software.<sup>294</sup> Opticom asserts that both types of rating systems thus can be implemented timely and at a reasonable cost to OSPs.<sup>295</sup> Moreover, according to Opticom, on-demand call rating would create only a minimal delay in call processing, approximately 12 seconds, and the technology could be developed to allow consumers to voluntarily bypass this rate information.<sup>296</sup> For these reasons, Opticom concludes, the Commission should adopt regulations requiring OSPs to provide on-demand rate information prior to call completion.<sup>297</sup>

---

<sup>288</sup> Letter from Judith St. Ledger-Roty, Counsel for Intellicall, Inc., to William A. Caton, Acting Secretary, Federal Communications Commission (March 21, 1997).

<sup>289</sup> Opticom Comments at 8 n.31.

<sup>290</sup> Id.

<sup>291</sup> See Opticom Comments, filed November 13, 1996, at Summary.

<sup>292</sup> Id. at 2.

<sup>293</sup> Id.

<sup>294</sup> Id. at 3-4.

<sup>295</sup> Id. at 3.

<sup>296</sup> Id.

<sup>297</sup> Id. at Summary.

15. In its response to the Bureau's Public Notice, CompTel recommends that the Commission adopt an alternative audible disclosure requirement that it now proposes instead of the disclosure described in OSP Reform Notice. CompTel asserts that its proposed disclosure requirement would not only be helpful to consumers but avoid what it regards as "the legal pitfalls of the Commission's proposal."<sup>298</sup> Specifically, CompTel now proposes that, before a customer may incur any charges for any interstate 0+ calls from an aggregator location, the presubscribed carrier serving that aggregator phone be required to provide an audible disclosure immediately after its carrier brand. Under CompTel's proposal, the customer would be instructed to press a key, e.g., the # key, to obtain a rate quote or assistance. Alternatively, at the option of the OSP, customers would be advised that they need only remain on the line to obtain rate quotes or assistance. Under CompTel's proposal, an OSP would not be permitted to require a caller to re-dial a second number to obtain a quote of its rates.<sup>299</sup> According to CompTel, the disclosure should be substantially in one of the following forms:

Option 1

BONG: "Thank you for using \_\_\_\_\_. For assistance or a rate quote, please press the \_\_\_\_ key. To complete your call, please enter your calling card number now."

Option 2

BONG: "Thank you for using \_\_\_\_\_. For assistance or a rate quote, please stay on the line. To complete your call, please enter your calling card number now."<sup>300</sup>

16. Because the disclosure it proposes is simple, direct, and consistent on each call, CompTel claims carriers could implement it with minimal expense, integrating it with the audible brand they already are required to provide.<sup>301</sup> CompTel contends that the overwhelming majority of OSPs would be able to provide the message it proposes if they were given the option of choosing among four methods for callers to obtain a rate quote, i.e., (1) "time out" (stay on the line) to a live operator, (2) press "0", (3) press "#", or (4) press "\*X" where X is a specified digit on the keypad.<sup>302</sup>

17. The National Association of Attorneys General (the Attorneys General) support adoption of rules requiring universal rate disclosure to the paying party, believing that option "would be administratively simpler, more informative, and fair"<sup>303</sup> than a benchmark system, and that "a complete and accurate universal rate disclosure requirement will increase consumer awareness and lead to more competitive pricing."<sup>304</sup>

---

<sup>298</sup> CompTel comments, filed Nov. 13, 1996, at 2-5.

<sup>299</sup> Id. at 3.

<sup>300</sup> Id.

<sup>301</sup> Id. at 5.

<sup>302</sup> Letter from Steven A. Augustino, Counsel for CompTel, to William F. Caton, Secretary, Federal Communications Commission, April 4, 1997, at 1.

<sup>303</sup> Attorneys General Comments at 4.

<sup>304</sup> Id. at 8.

18. The People of the State of California and the Public Utilities Commission of the State of California (the California Commission) argues that "disclosure on all calls will better serve to reduce customer confusion."<sup>305</sup> The California Commission, which strongly advocates BPP as the preferred solution to OSP pricing abuses, supports price disclosure by OSPs for all 0+ calls "because, in the interim, the full disclosure alternative would appear to provide many of the benefits of BPP at little, if any, cost to consumers."<sup>306</sup> It asserts that disclosure of OSP rates prior to the customer's use of the service is "a reasonable minimal protection," which should be afforded the OSP customer, and "believes that this expedient safeguard will significantly deter pricing abuses, and may result in a substantially lowered level of consumer complaints."<sup>307</sup> The California Commission favors disclosure of both the initial minute rate, including any operator or other surcharges, and subsequent minute rates, but not an averaged rate.<sup>308</sup>

19. The North Dakota Public Service Commission (North Dakota Commission) favors the oral disclosure of rates on all OSP calls over any benchmark approach because it "will contribute to a better consumer awareness of OSP pricing practices" which in turn "will enhance customers' ability to make true choices."<sup>309</sup> The North Dakota Commission states that, in its experience, operator service providers will increase their rates "to meet the competition" and that in such an environment, it does not believe the alternative benchmark proposal will have the intended result of motivating providers to keep rates low.<sup>310</sup> In addition, it believes "the benchmark alternative will be harder for companies to implement, harder for the FCC to enforce, and harder for customers to understand."<sup>311</sup>

20. In lieu of the imposition of a benchmark system, USLD "implores that any branding requirement . . . be imposed in a non-discriminatory manner, ubiquitously across all carriers regardless of their individual end user rates."<sup>312</sup> Oncor reiterates its previously stated position that if the Commission orders rate disclosures, the requirements "should be applicable to all providers of 0+ services, and should not be keyed to some arbitrarily established rate 'cap' or rate 'benchmark' set by the Commission . . . ." <sup>313</sup>

---

<sup>305</sup> California Commission Comments at 5.

<sup>306</sup> Id. at 3.

<sup>307</sup> Id. at 4.

<sup>308</sup> Id.

<sup>309</sup> Letter from Susan E. Wefald, President, Bruce Hagen, Commissioner, and Leo M. Reinbold, Commissioner, to Secretary, Federal Communications Commission (July 3, 1996).

<sup>310</sup> Id.

<sup>311</sup> Id.

<sup>312</sup> USLD Comments, filed November 13, 1996, at 13. (conversely, USLD contends that customers will have a negative response to additional call delay as a result of price disclosure. Id. at 10.)

<sup>313</sup> Oncor Comments, filed November 13, 1996, at 1; see also Oncor Comments at 3-4.

21. The Attorneys General express their support for universal rate disclosure, arguing "[t]he most obvious benefit of universal rate disclosure is that OSPs charging outrageous rates will no longer be able to surprise customers with a staggering bill weeks or months after the call in question. Rather, consumers, after hearing the rate disclosure, will be able to decide whether to incur the quoted cost or to access another provider."<sup>314</sup>

22. Omniphone, in response to the Bureau's requests for further information contends that "[a]ll \_smart technology\_ manufactured by Omniphone today has the ability to provide on-demand rate quotes to the calling party on all 0+ and 1+ calls . . . this includes public payphones and inmate phones."<sup>315</sup> Omniphone states that, in response to TOCSIA, it developed software that enabled its public payphone technology to provide accurate rate quotes for the specific call in question, "upon request, to the calling party for coin, calling card, and collect calls."<sup>316</sup> Omniphone argues that "the smart technology used by that coin payphone could just as easily quote 0+ rates if they do not now."<sup>317</sup>

23. The Pennsylvania Commission recommends, among other things, that OSPs be required to disclose, immediately following their oral identification brand, the specific aggregator surcharge for calls handled by that OSP.<sup>318</sup> The Pennsylvania Commission contends that a disclosure requirement for 0+ calls could eliminate prices charged in excess of competitive rates and should save consumers money.<sup>319</sup> The Pennsylvania Commission, in addition to supporting oral rate disclosure, also recommends that the Attorneys General's proposed disclosure requirement be modified to include the amount of the surcharge over and above the underlying carrier's rates that the end user will be assessed.<sup>320</sup> The Pennsylvania Commission argues that, "it would be more useful to the customer to know exactly what the surcharge will be on the call than to just know in general that they may be charged at a rate higher than that charged by their regular carrier."<sup>321</sup>

## B. COMMENTS ON RATE BENCHMARK OR PRICE REGULATION

---

<sup>314</sup> Attorneys General Comments at 5.

<sup>315</sup> Letter from Les Barnett, President, Omniphone, Inc. to the Commission (October 29, 1996), at 1.

<sup>316</sup> Id. at 2-3.

<sup>317</sup> Id. at 1.

<sup>318</sup> Pennsylvania Commission Reply Comments, filed May 5, 1995, at 11. In addition to supporting the NAAG proposal for a voice over on OSP calls to allow consumers to avoid the aggregator surcharge, the PaPUC has urged the Commission to cap OSP rates and to establish a \$1.00 cap on aggregator surcharges. Id. at 10-11.

<sup>319</sup> Pennsylvania Commission Comments at 5 (The Pennsylvania Commission maintains its position that regulatory oversight of OSP rates through the use of benchmarks is necessary. Id. at 5-6.

<sup>320</sup> Pennsylvania Commission Reply Comments at 10.

<sup>321</sup> Id. at 10-11.

Commenters in Favor of Proposed FCC Rate Benchmark Rules

24. Ameritech submits in its comments "that undoubtedly there should be such benchmarking, and that the three largest IXC's are the best yardstick."<sup>322</sup> Ameritech claims that "each of those carriers, [AT&T, MCI, & Sprint] besides providing operator services at aggregator locations, also serves a vast base of *non*-aggregator (*i.e.*, ordinary residence and business) locations."<sup>323</sup> Ameritech asserts that the three largest IXC's have operated in a competitive environment and serve as "something of a benchmark for the *same* carriers' rates that apply at aggregator telephones."<sup>324</sup> Ameritech further asserts that "specialized carriers who only serve aggregators have never been in a ballot campaign competing directly for the presubscription choices of end users so their charges never had to face the rigors of competition."<sup>325</sup> Accordingly, Ameritech maintains that, "[s]ince those carriers thus have no internal competitively-established benchmark against which their aggregator rates can be compared, it is entirely appropriate, in the interests of protecting consumers, to compare their aggregator rates to the benchmark rates of AT&T, MCI, or Sprint, which long have had to stand against competitive challenge."<sup>326</sup>

25. The IPTA argues that the Commission should use its authority to adopt rate benchmarks "which are tied to the Commission's actions taken in the Payphone Compensation Order."<sup>327</sup> The IPTA argues that "[a]fter the Commission eliminates the subsidies to local exchange carrier payphone providers (as required by Section 276 of the Telecommunications Act of 1996), and after the Commissions [sic] sets a fair rate of compensation (which at a minimum exceeds costs) for access code calls and subscriber 1-800 calls, then the Commission could set rate caps which are acceptable to consumers."<sup>328</sup>

26. Sprint states that "[a]s a corporation that participates in both tiers of the market, Sprint fully supports the benchmark concept proposed" by the Commission.<sup>329</sup> It agrees that "[t]he requirement to disclose rates that exceed the benchmark level will create a powerful inducement to moderate the changes in the high-rate tier of the market."<sup>330</sup>

---

<sup>322</sup> Ameritech Comments at 4.

<sup>323</sup> Id. (emphasis and parentheses in original).

<sup>324</sup> Id. at 4-5.

<sup>325</sup> Id. at 5.

<sup>326</sup> Id.

<sup>327</sup> IPTA Comments at 5.

<sup>328</sup> Id. (parentheses in original).

<sup>329</sup> Sprint Comments at 4.

<sup>330</sup> Id.

27. Certain commenters argue that a benchmark rate system has merit, subject to certain modifications. The Virginia Commission proposes that benchmark rates be established utilizing "the AT&T dominant carrier tariff rate schedule, plus a flat increase (as opposed to a percentage increase) of, say, \$.50 per call."<sup>331</sup> The Virginia Commission argues that such an approach would be simple to administer and would "meet the FCC objective of reflecting consumers' expectations."<sup>332</sup> Sprint supports a benchmark rate of 115% of the weighted average operator service charges imposed by Sprint, AT&T and MCI.<sup>333</sup> Sprint further contends that there "is no demonstrated need to impose the benchmark and disclosure requirements on 0+ calls made from business and residential phones."<sup>334</sup> U S WEST suggests that "the benchmark or rate ceiling should be as targeted and remedial as possible, focusing on those rates/prices where it is predictable that consumer complaints will be generated."<sup>335</sup> US WEST further urges that "[t]he benchmark should not necessarily try to emulate presumed \_just and reasonable rates\_ or to conform to speculative \_customer expectations.\_"<sup>336</sup>

28. NTCA states that ["it] is not opposed to the use of benchmarks for 0+ interstate calls, so long as the plan does not place the burden of monitoring and enforcement on its LEC members."<sup>337</sup> Further, NTCA submits that the proposal to set a benchmark by approximating the average price charged by AT&T, MCI and Sprint is reasonable. Pacific Telesis asserts that "setting a benchmark level for operator service rates will help to curb some of the abuses present in the marketplace", and that a "useful benchmark would be based on the average price charged by AT&T, MCI and Sprint."<sup>338</sup> Pacific Telesis supports oral disclosure of rates which exceed the benchmark, on the ground that "disclosing the actual price of the call is the only disclosure that will address the problem these rules are trying to solve."<sup>339</sup>

---

<sup>331</sup> Virginia Commission Comments at 3.

<sup>332</sup> Id.

<sup>333</sup> Sprint Comments at 5. Sprint, however, in anticipation of deliberate actions by other OSPs to avoid the spirit of the benchmark disclosure requirements, suggests, "the benchmarks should be revised quarterly, rather than annually. . . with a much shorter lag than the proposed six months between the date on which rates are based and the date on which they begin to apply." Id. at 5-6.

<sup>334</sup> Id. at 6.

<sup>335</sup> US WEST Reply Comments at 14.

<sup>336</sup> Id.

<sup>337</sup> NTCA Comments at 4-5.

<sup>338</sup> Pacific Telesis Comments at 3.

<sup>339</sup> Id. at 6.

Commenters Opposed to Proposed FCC Benchmark Rules

29. AMNEX and CompTel contend that the use of the rates assessed by AT&T, MCI, and Sprint to define consumer expectations violates the Equal Protection Clause of the U.S. Constitution.<sup>340</sup> According to AMNEX, the benchmark does not apply equally to all OSPs because, absent a precipitous increase in their own rates, which although legal have not been found to be just and reasonable, AT&T, MCI, and Sprint by definition would be excluded.<sup>341</sup> CompTel states that under the proposed benchmark, AT&T could raise its surcharge from \$2.25 to \$3.75 on third-party, operator station rates (an increase of over 67%) and still fall within the benchmark rate, which would increase to \$3.76, all other factors being equal. Relying on Supreme Court cases, CompTel contends that "the Commission may not grant preferences to preferred classes of carriers, and penalize others, simply based upon a hostility toward the disfavored class."<sup>342</sup> CompTel further argues that a disclosure requirement based on the rates of the Big Three would be arbitrary and discriminatory and deny all other OSPs equal protection of the laws.<sup>343</sup> CompTel states that because AT&T, MCI and Sprint permit but do not offer to bill and collect PIFs for aggregators such as hotels that presubscribe to them, these fees are not included in calculating the benchmark, even though they are part of the total charges for which consumers would be liable. CompTel contends that this arbitrarily penalizes those OSPs that collect PIFs on behalf of aggregators that presubscribe to them and that such distinction is arbitrary and capricious.<sup>344</sup> Cleartel/ConQuest contend that any standard disclosure that only applies to the smaller OSPs, and not to the three largest carriers, would be arbitrary and discriminatory.<sup>345</sup>

30. Noting that OSPs have many different classes of automated and live-operator-assisted calls as well as a variety of rates based on such factors as location, the jurisdictional nature of the call, and the distance of the call, AMNEX contends that if the FCC opted for a lesser disclosure regulation, such as the disclosure of its highest or average rate for a seven-minute domestic call, the requirement would in many cases only serve to confuse or mislead customers

---

<sup>340</sup> AMNEX Comments at 3; CompTel Comments at 14-15. As noted by one commenter, the Equal Protection Clause directs that "all persons [individuals and corporations] similarly circumstanced shall be treated alike." Peoples Reply Comments at 10 n.28 (quoting F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, (1920)). The fourteenth amendment to the U.S. Constitution provides, inter alia, that no state shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

<sup>341</sup> AMNEX Comments at 3.

<sup>342</sup> CompTel Comments at 14, (citing Romer v. Evans, 116 S. Ct. 1620, 1628 (1995) (quoting Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973))).

<sup>343</sup> Id. at 14-15.

<sup>344</sup> Id. at 15.

<sup>345</sup> Cleartel/ConQuest Comments at 7-10.



about the rates they actually would be charged.<sup>346</sup> AMNEX further contends that "alternative proposals . . . would compel affected OSPs to make commercial speech that was misleading or confusing."<sup>347</sup> AMNEX states that, "[b]ecause such speech would not directly advance the FCC's and [Congress' goal of allowing] consumers to make informed choices when making operator services calls, and could even serve instead to frustrate that purpose, such a regulation would contravene the First Amendment protection afforded commercial speech."<sup>348</sup>

31. AMNEX and CompTel contend that TOCSIA does not authorize the Commission to require OSPs to quote their exact charges on each call.<sup>349</sup> According to CompTel, Section 226(h)(2) allows the Commission only to require OSPs to state that rates are available on request and that "the Commission is not free to circumvent the OSP branding requirement by using it as a vehicle to bootstrap any information disclosure the Commission desires."<sup>350</sup> Similarly, AMNEX contends that TOCSIA expressly delineates the authority the Commission has to impose a pre-connection disclosure requirement and "limits" that authority to information concerning the availability of rates, not the rates themselves.<sup>351</sup> AMNEX further contends that "if carrier identification is to be equated with disclosure of rates," a conclusion that AMNEX finds illogical, "then *all* OSPs, including AT&T, MCI and Sprint, must disclose their rates prior to call connection, and the benchmark-related disclosure requirement is indefensible."<sup>352</sup>

32. AMNEX and CompTel contend that the Commission lacks authority to adopt its benchmark price disclosure proposal, not only under Section 226(h)(2) of the Act, but also under other sections of the Act.<sup>353</sup> AMNEX contends that adoption of a benchmark as proposed would constitute ratemaking that would not be in compliance with the Commission's authority to prescribe rates.<sup>354</sup> According to AMNEX, "rates consumers are willing to pay have never been relevant to a determination to reasonableness" and because the proposed benchmark is not based upon a record

<sup>346</sup> AMNEX Comments at 8-9, n. 22.

<sup>347</sup> Id.

<sup>348</sup> Id. (citing Zauderer v. Office of Disciplinary Council, 105 S. Ct. 2265, 2275, 2278, (1995) (regulation of commercial speech must serve a substantial governmental interest and be tailored to directly advance that interest). The first amendment provides, inter alia, that "Congress shall make no law ... abridging the freedom of speech ...." U.S. Const. amend. I).

<sup>349</sup> AMNEX Comments at 5-8; CompTel Comments at 7.

<sup>350</sup> CompTel Comments at 7-8.

<sup>351</sup> AMNEX Comments at 5.

<sup>352</sup> Id. at 6 (emphasis in original).

<sup>353</sup> Id. at 3-8; CompTel Comments at 5-11.

<sup>354</sup> AMNEX Comments at 3-4.

inquiry into the costs of providing operator services, the benchmark cannot be justified as just and reasonable.<sup>355</sup> Finally, AMNEX contends that the general provisions governing the Commission's rulemaking authority contained in Sections 4(i) and 226(d)(1) of the Act do not authorize the Commission to adopt its benchmark price disclosure proposal.<sup>356</sup> Similarly, CompTel contends that, for all practical purposes, the proposal would "prescribe" rates and the absence of any Commission finding, based on record evidence, that the prescribed rate is just and reasonable is "fatal to the Commission's exercise of its benchmark ratemaking authority under Section 205(a)."<sup>357</sup> CompTel further contends that the proposal cannot be justified under provisions of the Act that require carrier-specific hearings before prescribing a "hard" rate, which it defines as that which a carrier may not exceed under any circumstances, and that the affected carriers have not been afforded the "full opportunity for hearing" required under Section 205 of the Act for adoption of benchmark rates other than those that it has proposed.<sup>358</sup>

33. Cleartel/ConQuest assert that an FCC rate benchmark is the "functional equivalent of an FCC-prescribed OSP rate, even if the effect of exceeding the benchmark is only a trigger for rate-disclosure announcements."<sup>359</sup> While they concede that setting a benchmark rate level for OSP rate disclosures "is not *per se* ratemaking," they state that "it effectively establishes an industry-wide rate, because OSPs with rates exceeding this level will be driven to set rates at or below the benchmark level to avoid announcement burdens."<sup>360</sup>

---

<sup>355</sup> Id. at 4.

<sup>356</sup> Id. at 6. Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." 47 U.S.C. § 154(i). Section 226(d)(1) requires, *inter alia*, that the Commission prescribe regulations to "ensure that consumers have the opportunity to make informed choices in making [interstate operator services telephone] calls." 47 U.S.C. § 226(d)(1)(B).

<sup>357</sup> CompTel Comments at 9-10. Section 205(a) provides that:

[w]henever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of opinion that any charge, classification, regulation, or practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed . . .

47 U.S.C. 205(a).

<sup>358</sup> CompTel Comments at 10.

<sup>359</sup> Cleartel/ConQuest Comments at 7.

<sup>360</sup> Id. at 7-8 (footnote omitted).

34. CompTel asserts that the Commission's proposal to rely on "vague" conceptions of consumer "expectations" as the rationale for the proposed benchmark is legally and factually insufficient.<sup>361</sup> In its view, rates that consumers expect to pay for "away from home" calling are not a valid legal basis for prescribing carrier rates.<sup>362</sup> CompTel also argues that even if it is assumed that AT&T, MCI and Sprint's rates apply to the majority of minutes from aggregator telephones, this does not define consumer expectations in all operator service contexts.<sup>363</sup> AMNEX notes that FCC reports indicate that more consumers have complaints about AT&T than any other OSP, which "suggests that many persons simply are unaware of the high rates for operator services in general compared to those for direct dialed 1+ calls . . . " and, accordingly, that "customer willingness to pay is a fickle matter and certainly not a sound basis upon which to base a ratemaking."<sup>364</sup> Cleartel/ConQuest agree with CompTel's view that expectations of consumers is an invalid standard for ratesetting. Further, they contend that, even if a rate benchmark could be justified on the basis of consumer expectations, the choice of the three largest OSPs is "an administrative shortcut lacking in rational public policy justification," is "entirely arbitrary," is discriminatory "by definition," places an uneven burden on smaller OSPs, "would stigmatize all carriers other than AT&T, MCI and Sprint for the traveling public," and "creates a significant opportunity for anticompetitive pricing."<sup>365</sup>

35. ClearTel/ConQuest also argue that the OSP Reform Notice's benchmark and disclosure proposal would result in excessive regulations that impose burdensome and misleading requirements on OSPs and consumers alike.<sup>366</sup> USOC contends that "[n]either benchmark nor oral notification of rates are supported by any evidence."<sup>367</sup> HCI argues that the additional time it will take to process and disclose the information "will cause many otherwise-satisfied callers to hang up and go elsewhere even before the rate is delivered."<sup>368</sup>

---

<sup>361</sup> CompTel Comments at 11-12.

<sup>362</sup> Id.

<sup>363</sup> Id. at 13. CompTel states for example that a survey it took "found that a number of major hotels in Washington, D.C. charged 40 percent or more in excess of AT&T's daytime rates, even where AT&T was the presubscribed OSP for the telephone." (emphasis in original, footnote omitted) id. at 12. CompTel notes that, even though debit cards avoid substantial costs otherwise associated with a calling card call, such as a third-party validation, billing and collection, and live operator expenses, a 10-minute call with a Sprint debit card "would exceed the Commission's proposed customer dialed calling card charge by over \$1." id. at 13 (footnote omitted).

<sup>364</sup> AMNEX Comments at 3-4 n.8.

<sup>365</sup> Cleartel/ConQuest Comments at 8-9.

<sup>366</sup> Id. at 4.

<sup>367</sup> USOC Comments at 7.

<sup>368</sup> HCI Comments at 1.

36. ACTA submits that the Commission's benchmark proposals cannot pass Regulatory Flexibility Act (RFA) muster and that "a price disclosure requirement for all 0+ calls would provide consumers with the information necessary to make informed choices, and do away with the need for benchmark rates and oral disclosure requirements."<sup>369</sup> ACTA considers the Commission's tentative conclusion to rely on the Big Three's rates to establish publicly acceptable rates as "simply unsound" because it "ignores the different underlying costs borne by smaller carriers and the economic disparities which exist between the Big Three carriers and all other OSPs."<sup>370</sup> ACTA asserts that OSPs will be forced to charge rates below the Big Three benchmark rates to get consumers to use their services, and that such rates will not allow these carriers to recover their costs and a reasonable profit.<sup>371</sup> Accordingly, such proposal "has a confiscatory effect and the already disadvantaged smaller OSPs will be unable to sustain themselves in the marketplace . . . [contrary to] both the broad general policies seeking greater participation by smaller companies in competing in the OSP market, and with the more specific policy the Commission must apply in terms of its RFA analysis."<sup>372</sup> Moreover, consideration of the several characteristics or rate elements in the Commission's benchmark proposal "is contrary to the industry's growing reliance on nationwide flat rates."<sup>373</sup> In addition, ACTA asserts that "the formula underlying the proposal will provide the benchmark carriers with the opportunity to engage in anti-competitive conduct and predatory pricing."<sup>374</sup> ACTA contends that the Commission's proposal ignores economic facts and "leaps to the assumption that the rates of the Big Three represent those rates that consumers would expect to pay for operator services . . . [and as such] is but a self-fulfilling prophecy."<sup>375</sup> ACTA argues that "[s]uch circuitous reasoning creates the antithesis of maintaining competition and of avoiding regulation which unduly and unfairly burdens small businesses."<sup>376</sup>

37. BA/BS/NYNEX argue that the Commission should not base benchmarks on what consumers pay the Big Three for a 1+ call because "these prices are lower than those same carriers' prices for 0+ calls and may bear no particular, predictable relationship to 0+ prices."<sup>377</sup> USOC and HCI both argue that the difference between the hospitality and payphone industries are different

---

<sup>369</sup> ACTA Comments at 1.

<sup>370</sup> Id. at 2 (emphasis in original).

<sup>371</sup> Id. at 3.

<sup>372</sup> Id.

<sup>373</sup> Id. at 4.

<sup>374</sup> Id.

<sup>375</sup> Id. at 5 (footnote omitted).

<sup>376</sup> Id.

<sup>377</sup> BA/BS/NYNEX Comments at 10.

enough to warrant separate regulatory treatment by the Commission.<sup>378</sup> USOC contends that guest phones should be considered in the eligibility pool for payphone compensation or any implementation of benchmark rates should apply only to payphones.<sup>379</sup>

38. Opticom argues that the Commission has failed to provide support for the conclusion that consumers generally expect rate levels to be within a comparable range of rates charged by the three largest carriers.<sup>380</sup> Opticom further argues that even if such rates were reasonable, "the Commission has not proposed any safeguards to ensure that such rates remain reasonable."<sup>381</sup> Opticom continues, stating that "[l]arge OSPs such as AT&T, MCI and Sprint have wide latitude in setting their rates due to their large market share and other service offerings. Consequently, these carriers could engage in predatory pricing by reducing the cost of calls so dramatically as to destroy the ability of other OSPs to compete in the marketplace."<sup>382</sup>

39. Oncor similarly contends that, "the proposal to base the rate benchmarks on the rates of the three leading operator service providers -- all of whom are considered to be non-dominant -- would result in three companies whose rates are virtually unregulated becoming the de facto rate regulators of 500 other companies, the totality of which compromise a minuscule market share."<sup>383</sup> OSC asserts that "[a] benchmark rate must take into consideration the costs of providing service, yet no cost data has been provided to make this determination."<sup>384</sup> AT&T does not support the establishment of benchmark rates based upon the charges of any specific carrier or small group of carriers because such carriers' rates may not be reflective of the costs of other carriers.<sup>385</sup> Noting that because OSP rate structures vary, GTE contends that trying to force all to comply with a benchmark based on a fixed set of criteria could stifle innovative offerings.<sup>386</sup>

40. MCI, which continues to urge BPP as "the best way to protect the public, promote true competition in this market and end the need for a never-ending series of administrative

---

<sup>378</sup> USOC Comments at 8; HCI Comments at 4-5.

<sup>379</sup> USOC Comments at 3. Such compensation issues are beyond this proceeding, as well as our Payphone Compensation Order in CC Docket No. 96-128.

<sup>380</sup> Opticom Comments at 8.

<sup>381</sup> Id.

<sup>382</sup> Id.

<sup>383</sup> Oncor Comments at ii-iii.

<sup>384</sup> OSC Comments at 4.

<sup>385</sup> See AT&T Comments at 2.

<sup>386</sup> GTE Comments at 4.

proceedings," notes that "[s]o long as OSPs \_compete\_ to be the presubscribed carrier at a location by offering commission payments to premise owners, they may charge the calling public high rates in order to pay those commissions and profit . . . [and] aggregators will have the incentive to try to force consumers to use the presubscribed carrier to increase those payments."<sup>387</sup> Arguing that the proposed benchmark and disclosure rule is not needed in light of current rule Section 64.703(a)(3),<sup>388</sup> MCI contends that such a requirement "would significantly increase the burden on OSPs by requiring rate disclosure on all calls, even when consumers already know and accept the rates, without significantly improving the protection afforded consumers under the current rule."<sup>389</sup> MCI further contends that "[a]ll calls may have to be sent to a live operator, in the near term, in order to disclose the rates for a call . . . [and] estimates that it would cost an additional \$0.40 per call to do this."<sup>390</sup>

41. Intellicall state that the use of benchmarking would not reduce the cost of complying with a Commission order because, "as a manufacturer, Intellicall must offer a product that could be used by all carriers, including those that wish to charge above benchmark rates" so that "every store-and-forward payphone it manufactured would have to have this capability (and absent grandfathering, all embedded equipment would need to be retrofitted, even if the buyer of the product intended to charge less than the benchmark rates."<sup>391</sup>

42. The Office of Management and Budget (OMB), in commenting on our benchmark proposal in OSP Reform Notice, states:

There are some fundamental questions that the FCC must answer with this proposed rule and collection. First, how will consumers be informed what the benchmark is? Would the consumer be better served by requiring the OSP to inform the caller of the cost of the call, regardless of any benchmark? The FCC should also calculate and include, as a cost burden, the cost of installing the systems that will inform the consumer of the cost of call [sic] (or if the cost exceeds the benchmark.) It should not be assumed by the FCC that members of the public will know what a benchmark cost is. Their knowledge will, in general, be limited to the cost of services provided by their interlata carrier of choice.<sup>392</sup>

---

<sup>387</sup> MCI Comments at 2.

<sup>388</sup> Section 64.703(a)(3) requires, inter alia, that each OSP disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of its rates or charges for the call.

<sup>389</sup> MCI Comments at 3.

<sup>390</sup> Id. at 3-4.

<sup>391</sup> Letter from Steven A. Augustino, counsel for Intellicall, to William F. Caton, Secretary, Federal Communications Commission, June 12, 1997, at 2.

<sup>392</sup> Notice of Office of Management and Budget Action, No. 3060-070 (September 8, 1996).

## C. COMMENTS ON BILLED PARTY PREFERENCE

### Commenters Opposed to Ending Consideration of BPP

43. Ameritech, in a manner similar to MCI and Sprint, expresses its regret that the Commission announced its tentative conclusion to not consider BPP at this time, and encourages the Commission to continue to consider the idea in the future.<sup>393</sup> Ameritech disagrees with the Commission, stating that it does not believe the deployment of Local Number Portability (LNP) will lessen the incremental cost of BPP.<sup>394</sup> It, nevertheless, continues to support BPP as the best long-run solution to customer satisfaction issues regarding calling card, collect, and third-number calling.<sup>395</sup> MCI argues that BPP will provide an incentive for OSPs to compete for consumers' business on the basis of cost and service quality, which MCI contends is the best way to protect the public, and promote true competition in the market.<sup>396</sup> Sprint agrees that adoption of BPP would make all OSPs compete for call traffic by offering high-quality services to consumers at the lowest possible price.<sup>397</sup>

44. NARUC and the California Commission express their continued support for the BPP concept and encourage the Commission to act expeditiously to determine if BPP implementation is justified in light of the costs and jurisdictional issues.<sup>398</sup> The California Commission agrees with the Commission's observation that if local exchange carriers (LECs) are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP may be less than customer benefits from BPP.<sup>399</sup> The NYCPB also supports the Commission's further consideration of BPP, especially as LNP develops, as the NYCPB shares California Commission's belief regarding lower incremental costs.<sup>400</sup>

### Commenters In Favor of Ending Consideration of BPP

---

<sup>393</sup> Ameritech Comments at 1-2; MCI Comments at 2-3; Sprint Reply Comments at 2.

<sup>394</sup> Id.

<sup>395</sup> Ameritech Comments 1-2.

<sup>396</sup> MCI Comments at 2-3.

<sup>397</sup> Sprint Comments at 3.

<sup>398</sup> NARUC Comments at 1; California Commission Comments at 2.

<sup>399</sup> California Commission Comments at 2.

<sup>400</sup> NYCPB Comments at 7.

45. APCC, citing the opinions of many other parties, maintains that the record is "overwhelmingly" in favor of terminating consideration of BPP.<sup>401</sup> APCC states that of the LECs which previously supported BPP, all except one, now do not support BPP.<sup>402</sup> APCC notes that SWBT, which strongly supported BPP, now believes that the time for implementation of BPP has passed and that GTE, "another erstwhile diehard supporter, states that adoption of BPP has been frustrated by high capital costs and resultant cost recovery impacts on OSP rates."<sup>403</sup> APCC further notes that Ameritech, the only LEC still declaring support for BPP, states unequivocally that deployment of LNP databases as required by the 1996 Act is not likely to lessen the incremental cost of BPP.<sup>404</sup> BA/BS/NYNEX similarly contend that the record illustrates that technology and the market have overtaken BPP, and accordingly, the Commission should terminate this proceeding.<sup>405</sup> Like APCC, they note that even SWBT, perhaps BPP's most ardent supporter, has concluded that "the time for BPP has come and gone and the issue should now be closed".<sup>406</sup> BA/BS/NYNEX state that "[t]here is no factual support in the comments for the Commission's suggestion that number portability will put BPP back in the running again, even from those who continue to support BPP as a long range option."<sup>407</sup> Finally, BA/BS/NYNEX state that U S WEST has demonstrated in detail why BPP cannot "piggyback" on number portability; and that Ameritech has also concluded that number portability is not likely to lessen the incremental cost of BPP.<sup>408</sup> U S WEST asserts that LNP does not provide an alternative solution because LNP databases will only exist in limited geographic areas.<sup>409</sup> As such, LECs will have to interconnect their Line Information Databases (LIDB) to the LNP database and consequently incur excessive costs for the investment in OSS7 switching and additional signaling capacity.<sup>410</sup>

46. Other parties urge the Commission to cease consideration of BPP. CCI argues that for several years, consumers have been assured of reaching their preferred long distance carrier at payphones as required by TOCSIA, which is the key benefit of BPP, through dial-around calling.

---

<sup>401</sup> APCC Reply Comments at 9.

<sup>402</sup> Id.

<sup>403</sup> Id.

<sup>404</sup> Id. at 9-10.

<sup>405</sup> BA/BS/NYNEX Comments at 11-12.

<sup>406</sup> BA/BS/NYNEX Reply Comments at 4.

<sup>407</sup> Id. (footnotes omitted).

<sup>408</sup> Id. at 4 n.11,12.

<sup>409</sup> US WEST Comments at 12-14.

<sup>410</sup> Id.



CCI argues, therefore, that a need for BPP has been eliminated and implementation would impose extreme and unnecessary costs on the payphone industry.<sup>411</sup>

47. In addition to CompTel's assertion that the record establishes that BPP is not in the public interest,<sup>412</sup> other parties suggest that the costs of BPP implementation outweigh the benefits.<sup>413</sup> APCC argues that, based on the Commission's own assumptions, implementing BPP would cost \$1.5 billion per year and would not produce benefits worth more than \$221 million per year.<sup>414</sup> Intellicall and Teltrust state that they explicitly support the Commission's tentative conclusion that the "costs of implementing BPP significantly outweigh its purported benefits."<sup>415</sup> Intellicall continues, stating that imposing "the economic costs of BPP upon consumers would have substantially raised the rates for operator services, and substantially decreased the number of providers and the diversity of services."<sup>416</sup> NTCA agrees, specifically contending that the record has shown that industry-wide mandated BPP deployment is not economically feasible and would adversely affect small and rural LECs.<sup>417</sup> ACTA echoes the arguments of other parties in stating that it and many competitive IXCs, have argued that the costs of BPP substantially outweigh any potential benefit to customers.<sup>418</sup> Oncor, in accord with other parties, such as the Pennsylvania Commission and Peoples, cites numerous problems with BPP, including the extreme expense, and the inability of OSPs and LECs to implement the system in a manner which would result in categories of calls being routed to the billed parties' preferred carriers.<sup>419</sup> It is also claimed that BPP

---

<sup>411</sup> CCI Comments at 3-4.

<sup>412</sup> CompTel Comments at 20-23. (CompTel presents numerous arguments to support its belief that BPP is undesirable, including: (i) BPP would cost \$2 billion or more to implement; (ii) BPP would make national dialing uniformity worse, not better; (iii) BPP would inconvenience callers by increasing call set-up times and requiring many callers to repeat information for two separate operators; (iv) BPP would alter the routing of fewer than 20 percent of all operator assisted calls; and (v) BPP would strand millions of dollars invested in "smart" payphone technology.) *Id.* at 21.

<sup>413</sup> Intellicall Comments at i; Opticom at Comments 1; NTCA Comments at 2.

<sup>414</sup> APCC Comments at 17-18.

<sup>415</sup> Intellicall Comments at i; Teltrust Reply Comments 1-2.

<sup>416</sup> Intellicall Comments at i; Teltrust Reply Comments 1-2.

<sup>417</sup> NTCA Reply Comments at 2.

<sup>418</sup> ACTA Initial Regulatory Flexibility Comments at 2.

<sup>419</sup> Oncor Comments at 2; NTCA Reply Comments at 1-2; GTE Reply Comments at 3. Pennsylvania Commission Comments at 2. (The Pennsylvania Commission, although recognizing the benefits of BPP in theory, concludes that "given the estimated \$1 billion price tag to implement BPP, the costs of implementing BPP appear to greatly exceed the benefits at this time."), Peoples Reply Comments at 1-2. (Peoples states that the questionable effectiveness of the BPP scheme, coupled with its prohibitively expensive cost, prevent it from serving as an adequate mechanism to address operator services rate issues.)

would have relatively little impact on the routing of interexchange calls because a majority of public phones are presubscribed to the same carrier that is the preferred carrier for a substantial majority of billed parties.<sup>420</sup> Oncor asserts that in light of the rapid proliferation of dial-around calling by consumers to reach their preferred carriers, the implementation of TOCSIA, the Commission's regulations, and general consumer education, the need for BPP has dissipated.<sup>421</sup>

48. GTE and Intellicall assert that the "time has come to terminate further consideration of BPP" and that the Commission should "put billed party preference behind us."<sup>422</sup> Pacific Telesis expresses its agreement that, in light of changes that have taken place in the industry, BPP is not the appropriate solution "today that it may have been years ago."<sup>423</sup> USOC contends that the operator services industry has changed significantly since the original discussions on BPP, including increased dial-around traffic and competition in the industry and, as such, the Commission no longer need consider BPP.<sup>424</sup>

49. Certain parties, in their opposition to BPP, propose alternative pricing mechanisms. The Pennsylvania Commission supports the establishment of a modified ceiling on interstate domestic operator service rates in accord with the CompTel benchmark proposal, combined with the disclosure requirements outlined in the Attorneys General proposal.<sup>425</sup> GTE and SWBT propose that, in place of BPP, the Commission should allow market forces to operate for the protection of consumers and the elimination of unscrupulous carriers.<sup>426</sup>

50. The Attorneys General contend that, despite BPP's benefit of preventing OSPs from billing unsuspecting consumers at excessive rates, the BPP system's cost appears substantial and, the Attorneys General note, many reservations had been voiced against its adoption.<sup>427</sup> As such, the Attorneys General propose an alternative that would require OSPs to provide consumers with an oral

---

<sup>420</sup> Oncor Comments at 2.

<sup>421</sup> Id.; see also Opticom Comments at 1-2.

<sup>422</sup> GTE Reply Comments at 3; Intellicall Comments at i.

<sup>423</sup> Pacific Telesis Comments at 1-2.

<sup>424</sup> USOC Comments at 1, 5.

<sup>425</sup> Pennsylvania Commission Comments at 2-3. The Pennsylvania Commission notes that while it supports the establishment of ceilings on interstate domestic operator service rates, it contends the CompTel Proposal requires significant modifications, such as: (i) establishment of rate ceilings more in line with underlying costs; (ii) establishment of more substantive OSP obligations; and (iii) placement of enforcement actions upon the OSP rather than the LEC or FCC.

<sup>426</sup> GTE Reply Comments at 5; SWBT Comments at 5-6.

<sup>427</sup> Attorneys General Comments at 2.

disclosure, prior to connecting the call, warning of the potential for higher rates than charged by the consumer's regular carrier.<sup>428</sup>

51. Other parties argue that deployment of LNP data bases will not result in development of network capabilities that will significantly reduce BPP implementation costs.<sup>429</sup> SWBT argues that LNP and BPP would use separate data bases and would require different network upgrades.<sup>430</sup> Thus, according to SWBT, LNP implementation will not aid BPP deployment. SWBT further contends that the time in which OSPs and LECs could have deployed BPP efficiently has passed and deployment of BPP would now take years, particularly if it is attempted as a retrofit into a number portability design.<sup>431</sup> GTE contends that information for BPP is provided through LIDB, and as such, may require an OSP to access the LNP database on every call.<sup>432</sup> GTE continues, stating that the LIDB is only designed for storage of information necessary to route the call to the terminating location, not to the preferred OSP. Thus, argues GTE, this factor, among other network costs, renders BPP prohibitively expensive.<sup>433</sup> Pacific Telesis supports this conclusion by cautioning that the database being developed for LNP could not accommodate the information necessary to perform the BPP function.<sup>434</sup> Pacific Telesis maintains its belief that BPP should not be required during implementation of LNP.<sup>435</sup>

52. NTCA reiterates its concern that, in implementing a solution to OSP pricing, no undue burdens are imposed on small and rural carriers in efforts to simplify access to the network.<sup>436</sup> NTCA urges the Commission to eliminate BPP as an alternative in addressing operator service rate issues in the payphone services marketplace.<sup>437</sup> NTCA further urges the Commission to reject BPP as an appropriate mechanism by which to induce more effective competition, lower prices and improved services for customers who prefer not to use access codes.<sup>438</sup>

---

<sup>428</sup> Id.

<sup>429</sup> GTE Reply Comments at 3; Pacific Telesis Comments at 2.

<sup>430</sup> SWBT Comments 1-2; SWBT Reply Comments 3-4.

<sup>431</sup> SWBT Comments at 1-2; SWBT Reply Comments 3-4.

<sup>432</sup> GTE Reply Comments at 3.

<sup>433</sup> Id. at 3-4.

<sup>434</sup> Pacific Telesis Comments at 2, n. 1.

<sup>435</sup> Pacific Telesis Reply Comments at 20.

<sup>436</sup> NTCA Comments at 2-3.

<sup>437</sup> Id.; NTCA Reply Comments at 2.

<sup>438</sup> NTCA Reply Comments at 2.

53. The Ohio Commission agrees with the Commission's tentative conclusion that it would not be economical to institute BPP at the present time, since such a requirement would require the building of duplicate systems which would be capable of providing virtually identical functionalities.<sup>439</sup> The Ohio Commission, however, contends that the Commission should only defer its implementation of a BPP system until such time as number portability has been established.<sup>440</sup>

54. TRA echoes its previous comments before the Commission, arguing that immediate deployment of BPP will not result in an increase to consumer protection commensurate with the technical and financial burdens necessary to implement the system.<sup>441</sup> TRA does acknowledge its belief that the emergence of LNP may eventually lessen the costs of implementing BPP, but agrees with the Commission's tentative conclusion that, at the present, costs continue to outweigh the benefits BPP would provide consumers.<sup>442</sup>

55. APCC and CompTel assert that the lingering existence of the BPP docket continues to harm OSPs by making it more difficult for them to access capital and by increasing aggregator demands for accelerated commissions to recoup their investments.<sup>443</sup>

#### **D. COMMENTS ON FORBEARANCE FROM APPLYING SECTION 226 TARIFF FILING REQUIREMENTS**

##### Commenters Supporting Complete Detariffing

56. Oncor maintains that informational tariffs are not necessary to protect consumers against unfair or deceptive practices, or to ensure that consumers have the opportunity to make informed choices when placing a 0+ call from an aggregator location. Therefore, Oncor believes that the informational tariff requirement may be waived under Section 226, irrespective of Section 10(a) of the Act. Oncor maintains, however, that the Commission should not adopt rate benchmark proposals, which Oncor maintains are inconsistent with such waiver or forbearance.<sup>444</sup> Oncor further maintains that tariff forbearance for non-dominant carriers, both under Section 226 and Section 10 of

---

<sup>439</sup> Ohio Commission Comments at 2.

<sup>440</sup> Id. at 4-5.

<sup>441</sup> TRA Comments at 2-3.

<sup>442</sup> Id. at 3.

<sup>443</sup> APCC Reply Comments at 9-10; CompTel Comments at 21-22. See Teltrust Reply Comments at 8 (It is difficult to raise capital when potential investors are informed that a pending regulatory proceeding "could have an extremely negative impact on your ability to compete.")

<sup>444</sup> Oncor Comments at 16-18.

the Act, will have many pro-competitive public interest benefits, and that the Commission should not sacrifice its ability to take that deregulatory step simply to implement an unnecessary and ill-advised rate benchmark/rate disclosure requirement for non-dominant carriers providing 0+ services.<sup>445</sup>

57. Opticom supports a complete detariffing policy with regard to informational tariffs, agreeing with the Commission's conclusion that such tariffs are ineffective because they cannot provide information at the time of purchase.<sup>446</sup> Instead, Opticom supports the Commission's alternative proposal of a mandatory price disclosure as the best long-term solution for protecting consumers, particularly transient callers making 0+ calls from aggregator locations.<sup>447</sup>

58. AT&T maintains that the Commission should apply the same tariff forbearance rules to its operator services as it applies to its other interstate services.<sup>448</sup> BA/BS/NYNEX believe that Section 10(a) of the Act requires the Commission to forbear from applying all OSP tariffing requirements, those imposed by both Section 203 and Section 226 of the Act, and that either an audible disclosure of charges before connecting the call or a certification that the OSP will not charge more than FCC-established benchmarks will be far more effective in ensuring reasonable rates and protecting consumers than a complete tariff filing requirement.<sup>449</sup>

59. Pacific Telesis maintains that tariffs will not, and can not, protect consumers at the point of purchase; that the benefits of such tariffs are outweighed by their costs; and that oral disclosure is a much better tool for ensuring consumer protection.<sup>450</sup> SWBT states that the one tool with which consumers may protect themselves, namely, access code dialing, already exists; and that informational tariffs will not aid consumers in determining whether to use a particular OSP because a consumer using a payphone does not have ready access to the tariffs.<sup>451</sup> SWBT asserts, however, that in a market as competitive as operator services, all OSPs must be regulated equally, so that complete detariffing of non-dominant OSPs, without detariffing all competitors, fails to meet the Commission's pro-competitive goals.<sup>452</sup>

---

<sup>445</sup> Id. at 18.

<sup>446</sup> Opticom Comments at 10.

<sup>447</sup> Id. at 10-11.

<sup>448</sup> AT&T Comments at 5.

<sup>449</sup> BA/BS/NYNEX Comments at 8-9.

<sup>450</sup> Pacific Telesis Comments at 6-7; Reply Comments at 22-23.

<sup>451</sup> SWBT Comments at 5; Reply Comments at 22-23.

<sup>452</sup> SWBT Comments at 5-6.

60. The OCC supports forbearance with regard to the requirement to file informational tariffs "[b]ecause OSPs have misinformed consumers about the purpose of informational tariffs."<sup>453</sup>

#### Commenters Opposed to Complete Detariffing

61. The Telecommunications Subcommittee of the Consumer Protection Committee of the Attorneys General urge the Commission to maintain informational tariffing requirements for OSPs as a consumer protection measure and to ensure that OSP charges and practices are just and reasonable.<sup>454</sup> They recommend that OSP rates and charges, in addition to being available for public inspection at the FCC, also be accessible on line to the general public.<sup>455</sup> The California Commission strongly opposes forbearance of Section 226 tariff filing requirements applicable to nondominant interexchange OSPs. It believes that the filing requirement is an important safeguard that helps prevent arbitrary and discriminatory pricing, as well as an enforcement mechanism that may assist this Commission in determining whether an OSP's rates exceed its disclosure statement, or whether an OSP has violated or complied with FCC rules.<sup>456</sup> The Florida Commission does not support the use of forbearance authority to eliminate interstate tariff requirements because of possible repercussions at the state level.<sup>457</sup> If, however, the Commission should eliminate requirements for informational tariffs by non-dominant OSPs, the Florida Commission asserts that OSPs should be required to maintain, at their premises, price and service information and billing records at a designated location for inspection by regulators and consumers.<sup>458</sup> The Florida Commission further maintains that this information should be subject to a minimum retention period.<sup>459</sup> Similarly, the IPTA, which also urges that the Commission continue to require OSPs to file tariffs, states that "[i]t is important that all OSPs . . . be \_on record\_ somewhere of what rates they are charging for their services."<sup>460</sup>

62. ACTA does not support complete detariffing of any service offerings, including Section 203 tariffs. It contends that the rates of AT&T, MCI and Sprint should be published and readily available, given their tendency to act in their own vested interests, and further contends that

---

<sup>453</sup> Summary of The Office of the Ohio Consumers' Counsel's Initial Comments (July 16, 1996) at 1.

<sup>454</sup> Attorneys General Comments at 10-12.

<sup>455</sup> Id. at 12.

<sup>456</sup> California Commission Comments at 5.

<sup>457</sup> Florida Commission Comments at 7. The Florida Commission states that the decision to use tariffs at the state level is based on "a somewhat different set of considerations than might apply at the federal level." Id. at 8.

<sup>458</sup> Id. at 8-9.

<sup>459</sup> Id. at 9.

<sup>460</sup> IPTA Comments, received July 18, 1996, at 13.

informational tariffs are the only means by which consumers, competitors and regulatory bodies have sufficient information about OSP rates being charged and to control unscrupulous operators that give inadequate or intentionally misleading price disclosures.<sup>461</sup> APCC contends that: it is premature to remove the tariff filing requirement, not only of Section 226 but also of Section 203; benchmarks could be used as a criterion for when carriers should be required to file Section 203 tariffs; such filings should be on sufficient notice to prevent new above-benchmark rate filings from taking effect before they were found to be just and reasonable; and either Section 203 or Section 226 tariffs would enable the Commission to identify OSPs with above-benchmark rates for purposes of checking compliance with disclosure requirements.<sup>462</sup> APCC recommends that the Commission retain Section 203 authority with respect to OSP tariffs, establish a longer notice period before above-benchmark rates could take effect, and require detailed cost support information to be filed in support of such rates.<sup>463</sup> CompTel submits that the Commission should permit the filing of informational tariffs and that such permissive detariffing should apply equally to all nondominant OSPs, regardless of the rates that they charge.<sup>464</sup> USOC takes the position that all OSPs should be required to file tariffs containing exact rates and rate plans in order to understand industry actuals and resolve consumer complaints.<sup>465</sup>

63. MCI maintains that, if the Commission determines that tariffs are not required to protect the public interest, there can be no justification for an informational tariff and the Commission should forbear from applying this requirement.<sup>466</sup> MCI further maintains, however, that the Commission should not require complete detariffing for interstate operator services for all the reasons presented in CC Docket No. 96-91.<sup>467</sup> Sprint believes that all OSPs should be required to file tariffs for 0+ calls from public phone and other aggregator locations; that the Commission should prohibit range-of-rate tariff filings and require OSPs to file their tariffs pursuant to Section 203 of the Act.<sup>468</sup> Sprint argues that competition in this segment of the market does not work to drive prices down but instead drives prices up in order to finance commissions to aggregators to gain the 0+ business.<sup>469</sup> Sprint maintains that tariffs are needed as a tripwire to enable the Commission to

---

<sup>461</sup> ACTA Comments at 8-9.

<sup>462</sup> APCC Reply Comments at 8-9.

<sup>463</sup> See APCC Comments at 11.

<sup>464</sup> CompTel Comments at 23.

<sup>465</sup> USOC Comments at 3.

<sup>466</sup> MCI Comments at 5.

<sup>467</sup> Id.

<sup>468</sup> Sprint Comments at 8.

<sup>469</sup> Id. at 9.

determine whether further investigation is necessary. Even if proposed benchmark/disclosure requirements are adopted, Sprint maintains that tariffs can have important consumer protection functions. For example, if a benchmark is based on an assumed average call length, Sprint states that an OSP could charge below-benchmark rates for that particular call length, so as not to have to disclose its rates to customers, but charge higher rates for calls of shorter or longer duration. Sprint further states that tariffs also perform a useful function for OSPs. Where there is no pre-established relationship between the carrier and the party paying for the call, Sprint maintains that a tariff is necessary to form a contract between the carrier and casual users of its services and to protect the carrier from unscrupulous consumers of its services. In any event, even if the Commission forbears from requiring OSP tariffs, Sprint finds no warrant for complete detariffing. According to Sprint, OSP competitors have every incentive to raise their rates, and whatever collusive effect the filing of tariffs may have in other market segments is totally absent here.<sup>470</sup>

64. GTE, which favors benchmark rate regulation directed against the limited number of abusing OSP carriers, contends that forbearance from OSP tariff filing requirements is inconsistent with such regulation and inappropriate at this time.<sup>471</sup> NTCA believes, as it did with respect to the Section 203 tariff filing requirement, that a decision not to rely on tariffs would be premature; but that any decision made in this docket should be consistent with that reached in CC Docket No. 96-61.<sup>472</sup>

## **E. COMMENTS ON PETITIONS FOR RECONSIDERATION OF THE PHASE I ORDER (0+ IN THE PUBLIC DOMAIN)**

### Petitions Seeking Reconsideration of the 1992 Phase I Order

65. CompTel, Polar Communications Corporation (Polar), LinkUSA Corporation (LinkUSA), Capital Network System, Inc. (CNS), and International Telecharge Incorporated (ITI) collectively contend that the Commission has acted arbitrarily, capriciously, and in contravention to the record which, according to these parties, supports the argument that AT&T's CIID card program causes competitive harm to the OSP industry.<sup>473</sup> CNS argues that the Commission "improperly and unlawfully failed to establish regulations that would eliminate [the] anticompetitive problems" posed

---

<sup>470</sup> Id. at 9-11.

<sup>471</sup> GTE Comments at 9.

<sup>472</sup> As previously noted at footnote 22 of this Order, the Commission determined that the statutory forbearance criteria in Section 10 of the Communications Act are met for it to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services.

<sup>473</sup> CompTel Petition at 9; ITI Petition at 1,3; Polar Petition at 1; LinkUSA Comments at 2; CNS Reply to AT&T Opp. at 2-3. (ITI, Polar, and LinkUSA state their full support for CompTel's Petition for reconsideration).



by the CIID program.<sup>474</sup> ITI and Polar contend that the Commission failed to adequately assess the costs and benefits of the 0+ public domain proposal.<sup>475</sup> Intellicall and LinkUSA express their support of CompTel's Petition for Reconsideration, and urge the Commission to adopt a 0+ public domain policy that requires AT&T to open its validation database to all carriers, or require AT&T to use its proprietary CIID card in conjunction with an access code.<sup>476</sup> Opticom also supports CompTel's position, but urges the Commission to further modify the proposal to require AT&T to open its CIID database to OSPs regardless of whether AT&T requires CIID customers to access its network through access codes.<sup>477</sup>

66. CompTel argues that although the Commission recognized that in 1992 AT&T accounted for the majority of OSP minutes,<sup>478</sup> it failed to adopt an effective solution. CompTel presents four points in support of its Petition: (i) the record before the Commission demonstrates that AT&T's introduction of its CIID card created competitive harms;<sup>479</sup> (ii) the Phase I Order concluded an "immediate competitive problem" existed due to the requirement by other OSP providers to devote their "facilities to uncompletable calls";<sup>480</sup> (iii) despite recognizing these harms, the Commission failed to act in accord with its findings and instead promised to consider BPP as a solution and examine a compensation mechanism for CIID calls misdirected to OSPs;<sup>481</sup> and (iv) the Commission's cost/benefit analysis of 0+ public domain was erroneous because it increased the costs of the proposal based upon AT&T's statement that it would require access codes for its cardholders.<sup>482</sup> CompTel ultimately argues that the Commission's Phase I Order failed to assess properly the relative costs and benefits of the 0+ public domain proposal because it failed to recognize the unique nature of the CIID card in the 0+ dialing environment.<sup>483</sup> CompTel concludes that AT&T's CIID card will continue to confuse callers as long as it is permitted to blur the long-established separation between proprietary calling cards and the 0+ dialing method.<sup>484</sup>

---

<sup>474</sup> CNS Reply to AT&T Opp. at 2.

<sup>475</sup> ITI Petition at 1,3; Polar Petition at 1.

<sup>476</sup> Intellicall Comments, filed March 19, 1993, at 2; LinkUSA Comments, filed March 19, 1993, at 2.

<sup>477</sup> Opticom Comments, filed March 22, 1995, at 5.

<sup>478</sup> CompTel Petition at 6-7.

<sup>479</sup> Id.

<sup>480</sup> Id. at 9, 11-12.

<sup>481</sup> Id. at 16-17.

<sup>482</sup> Id. at 16-20.

<sup>483</sup> Id. at 19-20.

<sup>484</sup> CompTel Reply to Comments, filed March 29, 1993, at 5.

67. MCI claims that the Commission's Phase I Order failed to address AT&T's "anticompetitive and discriminatory" behavior in connection with AT&T's CIID card.<sup>485</sup> MCI contends that although the Commission recognizes that AT&T's behavior was improper, the Commission's Phase I Order allows AT&T to benefit from an unfair competitive advantage in the OSP market.<sup>486</sup> MCI further contends that the Commission inappropriately dismissed the issue of allowing LECs to validate its CIID card, but not OSPs, and thus, ignored further evidence of AT&T anticompetitive behavior.<sup>487</sup> MCI claims that the Commission is incorrect in stating an uncertainty regarding whether the 0+ public domain alternative would substantially aid OSP competition for presubscribed locations.<sup>488</sup> Indeed, MCI contends that a competitive benefit would exist if AT&T no longer issued a 0+ card or if AT&T issued a 0+ card and opened its database.<sup>489</sup>

68. Value-Added Communications (VAC) contends that the Commission's Phase I Order is in derogation of past Commission precedent and the public interest.<sup>490</sup> VAC argues that the issuance of AT&T's proprietary CIID card represents an attempt by AT&T to re-monopolize the OSP industry.<sup>491</sup> VAC urges the Commission to subject CIID cards to validation sharing requirements because, as VAC argues, "AT&T's status as a dominant carrier makes it unlawful for AT&T to provide validation functions for intraLATA usage of its cards" to some but not all competing OSPs.<sup>492</sup> PhoneTel Technologies, Inc. (PhoneTel) also asks the Commission to require the opening of AT&T's database, contending that AT&T chooses to allow certain companies access to its database, while denying others access, and thus concludes that the CIID cards are not truly proprietary.<sup>493</sup> PhoneTel contends that AT&T's establishment of "voluntary relationships with its former partners" is further evidence that AT&T's CIID card is not truly proprietary.<sup>494</sup> PhoneTel argues the CIID card is not proprietary because "use of a CIID card neither ensures the cardholder AT&T service nor AT&T rates."<sup>495</sup> LDDS Communications, Inc. (LDDS) concurs in this

---

<sup>485</sup> MCI Petition at 1-3.

<sup>486</sup> Id. at 3.

<sup>487</sup> Id.

<sup>488</sup> Id. at 4-5.

<sup>489</sup> Id. at 5.

<sup>490</sup> VAC Petition at 1.

<sup>491</sup> Id.

<sup>492</sup> Id. at 4-5.

<sup>493</sup> PhoneTel Petition at 3-4.

<sup>494</sup> PhoneTel Reply to Opp. to Petition at 4.

<sup>495</sup> Id.

conclusion, stating that AT&T's calling card may be validated by virtually any company that jointly provided long distance telephone service with AT&T prior to divestiture.<sup>496</sup> LDDS contends that "since the entire pre-divestiture long distance telephone \_partnership\_ has access to that data base, the cards are not proprietary cards; they are \_integrated monopoly\_ cards."<sup>497</sup> LDDS further argues that under prior Commission decisions, "once AT&T held out the availability of access to its CIID card data base to some carriers, it became obligated as a common carrier to make that access available on a nondiscriminatory basis to all carriers."<sup>498</sup>

69. The petitioners also present arguments against the Commission's consumer education mandate. LDDS argues that the Phase I Order remedy allows AT&T to continue to benefit from the very conduct which gave rise to the Commission's competitive concerns, and consumers as well as competitors will continue to suffer the adverse consequences of that conduct.<sup>499</sup> APCC argues that by requiring AT&T to "cease discriminatory validation," AT&T would then have the option of preserving its cards as true proprietary cards which cannot be validated by any other carrier.<sup>500</sup> Thus, APCC argues, AT&T cards are placed "on the same footing as other IXC proprietary cards."<sup>501</sup> MCI, in addition to CompTel, and LDDS, argues that the Commission's proposed customer education solution will "do nothing to reduce AT&T's dominant position" in the OSP industry because of AT&T's ability to offer a 0+ card, and will fail to end consumer confusion and frustration.<sup>502</sup> LDDS argues that there is no basis to support the Commission's conclusion in this proceeding that customer education will be sufficient to change twenty-five million CIID card holders' dialing practices.<sup>503</sup> PhoneTel urges the Commission to modify its customer education requirement by directing AT&T to recall all CIID cards and issue replacement cards with correct dialing instructions.<sup>504</sup> SWBT argues that, unless modified, the Commission's present instructions will require customers to dial calls with access codes and without "the convenient use of 0+."<sup>505</sup> SWBT further contends that the Commission's instructions to AT&T will "create confusion for customers who receive conflicting information from SWBT service personnel in response to

---

<sup>496</sup> LDDS Petition at 5.

<sup>497</sup> Id.

<sup>498</sup> LDDS Reply to Opp. to Petition at 3.

<sup>499</sup> See, e.g., LDDS Petition at 3.

<sup>500</sup> APCC Reply to Opp. Petition at 2-3.

<sup>501</sup> Id.

<sup>502</sup> CompTel Petition at 7; LDDS Petition at 2; MCI Petition at 7.

<sup>503</sup> LDDS Petition at 15.

<sup>504</sup> PhoneTel Petition at 8-9; see also LDDS Petition at 15-16 regarding recall of AT&T Calling Cards.

<sup>505</sup> SWBT Reply to Opp. Petition at 3-4.

questions about use of AT&T cards on SWBT's network."<sup>506</sup> SWBT recommends that the Commission, in reconsideration of its Phase I Order, order AT&T to inform customers that calls can be completed on a 0+ basis when they hear the announcement of AT&T or a LEC.<sup>507</sup> SWBT and Intellicall contend that informing customers that 0+ dialing is readily available will reduce confusion and inconvenience because customers may dial 0+ and complete the call over the LEC's network.<sup>508</sup>

#### Opposition to Reconsideration of the 1992 Phase I Order

70. AT&T argues that none of the OSPs offers any new facts or presents any valid reason why the Commission should now reverse its course and impose the costs of the 0+ public domain proposal upon millions of consumers.<sup>509</sup> AT&T contends that the Phase I Order's remedies are supported by the record.<sup>510</sup> AT&T disputes CompTel's claims that 0+ dialing is inconsistent with proprietary cards.<sup>511</sup> AT&T further argues that, unlike the LECs who have independent non-discrimination obligations to all IXC's because they provide monopoly access service, AT&T owes no such obligations to its OSP competitors. In reply to the OSPs' petitions, AT&T points to CompTel's statement that "industry experience shows that with accurate and understandable dialing instructions, customers have little problem using access codes and proprietary cards."<sup>512</sup> AT&T argues that the adoption of the 0+ public domain concept purely for the sake of "increasing parity in the operator services market," is not consistent with the role of the Commission, and in all events, would "simply handicap AT&T for the sake of its competitors."<sup>513</sup>

71. AT&T further disputes PhoneTel and LDDS' arguments that AT&T should make its validation database accessible to OSP competitors, arguing that the defining attribute of all proprietary assets, including AT&T's proprietary card validation system, is the owner's right to control the use of those assets. Thus, AT&T argues, the proprietary nature of AT&T's card validation system is not affected by the voluntary relationships AT&T has established for the use of that system.<sup>514</sup> AT&T notes that the issues raised by SWBT relate solely to competition for

---

<sup>506</sup> Id. at 4.

<sup>507</sup> SWBT Petition at 4.

<sup>508</sup> Id. at 3-4; Intellicall Petition at 3-4. (Although Intellicall agrees with SWBT's description, Intellicall urges the Commission to deny SWBT's Petition. See Intellicall Comments at 8.)

<sup>509</sup> AT&T Opp. Petition at 3; AT&T Reply in Opp. to Petition at 2.

<sup>510</sup> AT&T Opp. Petition at 3-4.

<sup>511</sup> Id. at 4.

<sup>512</sup> AT&T Opp. Petition at 6, citing CompTel Petition at 19.

<sup>513</sup> Id. at 8.

<sup>514</sup> Id. at 11-12.

intrastate calls and the potential impact of AT&T's marketing messages on the LECs.<sup>515</sup> AT&T contends that these issues were ruled beyond the scope of this proceeding and, with respect to the intrastate competition issues, were beyond the scope of the Commission's jurisdiction.<sup>516</sup>

72. Sprint, opposes reconsideration of the Phase I Order, in part, because it believes that BPP is the optimal solution to the imbalances that exist in the OSP market.<sup>517</sup> SWBT expresses its agreement with Sprint on this point, arguing that the technology required for implementation of 0+ public domain is not yet available, as 0+ public domain requires signaling technology which is a component required for implementation of BPP, and as such, is not expected to be available before the other required technology components needed for BPP are also available.<sup>518</sup> SWBT argues that 0+ public domain would require specially designed Signaling System Seven (SS7) technology between LEC end-offices and IXC operator services switches for processing of operator services calls.<sup>519</sup> Such signaling would be necessary so that IXCs could know how the customer dialed the call (i.e., 0+ vs. access code).<sup>520</sup> SWBT contends that unless this intelligence was passed to the IXCs, all 0+ interLATA calls would have to be blocked at the end office, which, SWBT asserts is not in anyone's interest.<sup>521</sup>

73. Sprint also opposes reconsideration of the Phase I Order because certain OSPs define 0+ public domain so broadly as to affect practices of other carriers, including Sprint, which Sprint contends are not part of the problem with CIID card use.<sup>522</sup> Sprint argues that the current technology does not allow proprietary calling card issuers to block the use of 0+ without also blocking the access code.<sup>523</sup> Sprint further contends that the effect of a broadly defined "0+ public domain" proposal would require Sprint and other IXCs to abandon 10XXX as an access method for calling card calls.<sup>524</sup> Sprint argues that it, and other similarly situated IXCs, should not be forced to bear the brunt of solving "a problem that is of AT&T's making".<sup>525</sup>

---

<sup>515</sup> Id. at 13-14.

<sup>516</sup> Id. at 14.

<sup>517</sup> Sprint Opposition, filed March 19, 1993, at 2.

<sup>518</sup> SWBT Comments, filed March 10, 1993, at 2-3.

<sup>519</sup> Id. at 2-3.

<sup>520</sup> Id.

<sup>521</sup> Id.

<sup>522</sup> Sprint Opposition, filed March 19, 1993, at 2.

<sup>523</sup> Id. at 2-3.

<sup>524</sup> Id.

<sup>525</sup> Id.

## F. COMMENTS ON 0+ CALLS BY PRISON INMATES

74. In addressing the issue of BPP for inmate-only telephones, C.U.R.E. notes that for over three years it has urged the Commission to adopt a BPP scheme for inmate calling.<sup>526</sup> C.U.R.E. expressed its continuing support for BPP as the best available means of promoting lower rates and improved services for families and friends of inmates and acknowledged the Commission's indication that BPP would be given further consideration in relation to the implementation of number portability. C.U.R.E. urged the Commission to implement mandatory, self-executing rate-caps and other operational measures as interim alternatives to BPP.<sup>527</sup>

75. The Florida Commission states that requiring full price disclosure to the called party before the call is completed would not be an effective way to prohibit unreasonable rates on collect calls placed by prison inmates because the called party cannot choose another carrier to complete the call.<sup>528</sup> Instead, the Florida Commission supports imposition of an absolute rate cap on such calls, as it does on OSP rates.<sup>529</sup> The Florida Commission notes that inmates' families and legal counsel can be protected from excessive charges if inmates may place calls to personal 800 numbers.<sup>530</sup> As it explains, the use of 800 numbers allows the called party to:

use whatever IXC he prefers and . . . retain control of the rates he is billed. The correctional facility can still retain control over the numbers the inmate calls as it has the ability, through [customer-premises equipment], to prohibit calls to all but previously authorized numbers, blocking all other numbers so that the inmate cannot dial around.<sup>531</sup>

Similarly, prisons could allow inmates to use debit cards that they purchased, or their families purchased on their behalf, and screen access numbers inmates would use to place a call before allowing them to use such cards.<sup>532</sup> The Florida Commission recognizes that administration of such a system might be a burden on prisons that currently rely on providers of operator services to maintain fraud control systems "in return for an outbound calling monopoly" and also could result in

---

<sup>526</sup> C.U.R.E. Comments at 2.

<sup>527</sup> Id. at 3; C.U.R.E. Reply Comments at 2.

<sup>528</sup> Florida Commission Comments at 10.

<sup>529</sup> Id.

<sup>530</sup> Id. at 10-11.

<sup>531</sup> Id.

<sup>532</sup> Id. at 11.

reduced "commission payments" to such prisons.<sup>533</sup> It believes, however, that because customer-premises equipment (CPE) solutions to control fraud in prisons are now readily available, "it is appropriate to review the justification for restricting all inmate outbound calls to a single provider."<sup>534</sup>

76. The Coalition proposes that any inmate calling services provider charging in excess of FCC-benchmark rates for inmate calls be subject to dominant carrier tariff filing procedures, including the requirement that it cost-justify its rates.<sup>535</sup> The Coalition further proposes that any such carrier should also be required to file individual tariffs for every facility where it charged rates over the FCC-benchmark for inmate calls (except interstate calls from states that have capped intrastate rates below "compensatory levels").<sup>536</sup> The Coalition urges the Commission to require quotes on-demand rather than as a mandatory rate disclosure to maximize the utility of rate information.<sup>537</sup> The Coalition contends that disclosure notices should apply to called parties, because it argues, "[a] price disclosure message will also trigger called parties to investigate what they believe to be excessive rates."<sup>538</sup> The Coalition argues that, especially in the case of inmates, who, "repeatedly call the same small circle of friends and family", a mandatory price rate quote could have a "numbing effect on consumers."<sup>539</sup> C.U.R.E. believes that, to ensure that ratepayers and their representatives are able to monitor inmate provider billing rates, the Commission should require inmate service providers to: file informational tariffs with the FCC; make copies available for public inspection in a file maintained on the premises of the correctional facility to whom the provider offers service; and provide copies to interested parties on request.<sup>540</sup>

77. Both the Federal Bureau of Prisons and the Office for Victims of Crime, two agencies within the Department of Justice, have expressed concern that BPP in the prison setting might jeopardize the current capability of correctional agencies or prisons to control and monitor inmate telephone use.<sup>541</sup> Because of these concerns, the Attorney General of the United States has

---

<sup>533</sup> Id.

<sup>534</sup> Id.

<sup>535</sup> Coalition Comments at 11.

<sup>536</sup> Coalition Reply Comments at 8. As previously noted (supra n.22), the Commission subsequently determined that the statutory forbearance criteria in Section 10 of the Communications Act had been met for it to no longer require or allow nondominant interexchange carriers to file tariffs pursuant to Section 203 of the Act for their interstate, domestic, interexchange services.

<sup>537</sup> Coalition Comments, filed November 13, 1996, at 4-5.

<sup>538</sup> Coalition Comments at 12.

<sup>539</sup> Coalition Comments, filed November 13, 1996, at 4-5.

<sup>540</sup> C.U.R.E. Comments at 8.

<sup>541</sup> See letter from Janet Reno, Attorney General of the United States, to Reed E. Hundt, Chairman, Federal

urged that BPP not be applied to prison inmate telephones, noting that the capability to control and monitor inmate telephone use "is crucial in maintaining the security of correctional facilities, the safety of the general public, and special protections for victims and witnesses of crime."<sup>542</sup>

78. The Coalition asserts that it would be "a gross mistake" to implement BPP in the inmate calling environment, because it would be tremendously expensive; lead to a marked decrease in the security of confinement facilities; lead to a drastic increase in telephone harassment, fraudulent calling and other criminal activity by inmates; drastically reduce the access of inmates to calling opportunities; and because it could result in an increase in inmate calling rates, rather than "its only possible benefit - a reduction" in such rates.<sup>543</sup> Indeed, the Coalition argues that due to the enormous cost of instituting BPP in the inmate environment, it is likely that the recipients of inmate collect calls would incur that cost, through a BPP charge added to the rates for such calls to pay for BPP implementation.<sup>544</sup> The Coalition asserts that not a single commenter continues to advocate BPP in the inmate environment, and that "even C.U.R.E., which has long been a highly vocal proponent of BPP, concedes that BPP is not currently a viable option."<sup>545</sup> Gateway asserts that inmate service providers face significant security and fraud prevention needs that can only be satisfied through call blocking and restricting inmate services to collect calls and, accordingly, that the Commission cannot legitimately provide for carrier choice or BPP in the inmate services environment.<sup>546</sup>

79. Gateway believes that targeted Commission enforcement efforts against inmate operator service providers charging excessive rates are preferable, for both policy and legal reasons, to an FCC-mandated rate cap.<sup>547</sup> Gateway recognizes, however, that the only information useful to recipients of inmate calls is rate information provided in real time, prior to acceptance of the call.<sup>548</sup> Accordingly, Gateway asserts that establishing a rebuttable rate ceiling for inmate service rates, at the average inmate service rates of the three leading IXCs, and requiring full rate disclosure, in real time, by inmate service providers is "the best alternative to BPP for the inmate services market."<sup>549</sup>

---

Communications Commission, October 31, 1994.

<sup>542</sup> Id.

<sup>543</sup> Coalition Comments at 7, 14.

<sup>544</sup> Id. at 6-7.

<sup>545</sup> Coalition Reply Comments at 2.

<sup>546</sup> Gateway Comments at 3-4.

<sup>547</sup> Id. at 3.

<sup>548</sup> Id. at 10.

<sup>549</sup> Id. at 3.



GTE, specifically argues that application of BPP is unnecessary in light of the Commission's acknowledgement in CC Docket No. 94-158 of many commenters' assertions that inmate service rates had been brought under control during the previous five-year period and that the market was highly competitive.<sup>550</sup>

---

<sup>550</sup> GTE Comments at 10, referring to Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators, 11 FCC Rcd 4532, 4548 (1996). The Commission did not reach any conclusion there regarding the reasonableness of inmate service rates and the competitiveness of those services but determined that the issue of inmate rates should be dealt with in the instant proceeding.

---

**Separate Statement of Commissioner Gloria Tristani**

*Re: Billed Party Preference for InterLATA 0+ Calls, Second Report and Order and Order on Reconsideration*

The Commission continues to receive thousands of complaints every year about high rates charged by Operator Service Providers (OSPs). Today's Order greatly simplifies the way payphone users can learn the OSP's rates for a 0+ call prior to placing the call. I hope that our action today will eliminate the "sticker shock" often experienced by consumers when they use OSPs to place long distance calls.

However, we should be clear about what today's Order does not do -- it does not automatically eliminate high OSP rates. It merely enables payphone users who dial 0+ for a long distance call to know the rate before making the call. If the rate quoted is too high, the caller can choose not to make the call using 0+ dialing.

Unfortunately, operator services from payphones are a rare example of competition leading to higher prices for consumers. When more OSPs compete for the right to serve a particular location, they must pay higher commissions to the location owner. OSPs often recover those higher commissions from consumers in the form of higher calling charges.

For that reason, we will continue to monitor OSP rates through tariff filings and through the complaint process. If the "bad actor" OSPs continue to generate a significant volume of complaints at the Commission, I would support more direct action to protect payphone users, such as capping the rates that OSPs can charge.

###